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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~324~~ 69.

THE UNITED STATES, APPELLANT,

vs.

THEODORE DALCOUR ET AL., HEIRS OF JOHN FORBES, DECEASED, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED JULY 3, 1905.

(19826.)

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1 *Caption.*

Be it remembered that at a term of the District Court of the United States, in and for the Southern District of Florida, begun and holden at Jacksonville, Florida, on the first Monday of December, A. D. 1904, and which term has not yet finally adjourned, the Hon. James W. Locke, United States district judge, presiding, the following proceedings were had, and the following cause came on for trial and was decided, to wit:

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES. } No. 210. Petition.

2 *Notice of application to restore record.*

In the District Court of the United States for the Southern District of Florida.

To Honorable JOSEPH N. STRIPLING,
United States Attorney for the Southern District of Florida.

SIR: Please take notice that I have this day presented to the Honorable James W. Locke, judge of the District Court of the United States for the Southern District of Florida, a petition by and on behalf of persons interested in the suit pending in the District Court of the United States for the Northern District of Florida at the date of the act of Congress approved the 23rd day of July, 1894, and by said act transferred into the Southern District, the record and files which were destroyed by the fire which burned the court-house at Jacksonville, Florida, on or about the 19th day of May, A. D. 1891, setting out the destruction of the record and files of said suit, and praying for the restoration thereof according to the statute in such case made and provided.

The title of said cause is Dalcour et al. vs. The United States, and said suit was instituted for the confirmation of a grant of land in Florida made by the lawful authorities of the King of Spain to John Forbes and Company on the 10th day of January, A. D. 1818.

A copy of the petition filed is hereto attached, and you are advised that a hearing upon said petition has been ordered by the said court upon the third day of December next, being more than sixty days after service of this notice.

W. W. DEWHURST,
Attorney for Petitioners.

Service of this notice and copy of the petition therein referred to received this 14th day of June, A. D. 1900.

J. N. STRIPLING,
U. S. Dist. Atty. So. Dist. of Florida.

(The foregoing is indorsed): "#210. U. L. 2. In the District Court of the United States for the Southern District of Florida. Dalcour et al. vs. The United States of America. Notice of application to restore the record. Filed June 15th, 1900. E. O. Locke, clerk."

* * * * * * *

7 *Amended petition for restoration of record.*

In the District Court of the United States for the Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES OF AMERICA.

To the Honorable JAMES W. LOCKE,
Judge of the District Court of the United States for the Southern District of Florida:

Leave of court having been given, the original petition filed herein is amended to read as follows:

The undersigned as attorney for numerous of the persons mentioned in the suit pending in the District Court of the United States for the Northern District of Florida on the 23rd day of July, A. D. 1894 (and by act of Congress entitled "An act to change the boundaries of the judicial districts of the State of Florida," approved July 23rd, A. D. 1894, transferred into the District Court of the United States for the Southern District of Florida), wherein Theodore Dalcour et al., representing John Forbes, Henrietta Innerarity, widow of Henry Wilson, and others, representing John Innerarity; and Eloise or Eilza Innerarity, widow of Louis Minor, and others, representing James Innerarity, were complainants or petitioners and the United States of America was defendant; respectfully show unto your honor;

(On February 7th, 1901, the foregoing was amended as follows:)

In the District Court of the United States, Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES OF AMERICA.

Comes now on this 7th day of February, A. D. 1901, the parties next hereinafter named, by W. W. Dewhurst, their attorney, and leave of the court having been given, amend their amended petition of restora-
8 tion filed in this cause, by substituting in the introductory part thereof the following in the place of the introduction in said amended petition, so that the introductory part thereof or first paragraph shall read as follows:

Heloise or Eliza Innerarity, widow of John S. Barton, of New Orleans, State of Louisiana, and Heloise or Eliza I. Minor, widow of Louis Minor, of Norfolk, State of Virginia, heirs and descendants of James Innerarity; Emma Hulse Taylor, of Pensacola, State of Florida, and Albert P. Hulse, formerly of Bay St. Louis, State of Mississippi, now of Los Angeles, State of California, and William H. Wilson, heirs and descendants of John Innerarity; and Harriet F. Innerarity, wife of Le Breton Des Chappelles, joined by said E. Le Breton Des Chappelles, of New Orleans, State of Louisiana, and heir and descendant of both John Innerarity and James Innerarity; all of whom, except William H. Wilson,

were themselves original parties complainant therein, and who are severally persons interested in the records of the suits pending in the District Court of the United States for the Northern District of Florida, on the 23rd day of July, A. D. 1894 (and by the act of Congress, entitled "An act to change the boundaries of the judicial districts of the State of Florida," approved July 23rd, 1894, transferred into the District Court of the United States for the Southern District of Florida); wherein Theodore Dalcour et al., representing John Forbes, Henrietta or Harriet Victorie Innerarity, widow of Henry Wilson, and others, representing John Innerarity and Eloise or Eliza Innerarity, widow of Louis Minor, and others, representing James Innerarity, were complainants or petitioners, and the United States of America were defendants, in behalf of themselves and all others in like situation, parties to said suit, or their descendants or legal representatives, by W. W. Dewhurst, their attorney, respectfully show unto your honor.

W. W. DEWHURST,
Atty. for Petitioners.

(The foregoing is indorsed): "# 210. U. L. 2. District Court of the United States, So. Dist. of Florida. Dalcour et al. vs. The United States. Amendment to amended petition for restoration. Filed Feb. 7, 1901. E. O. Locke, clerk."

9 (1) That by the fire which burned the United States court-house in Jacksonville on May 19th, A. D. 1891, the record and the files in the above stated cause then pending in the District Court of the United States for the Northern District of Florida were wholly burned and destroyed;

(2) That said loss was without fault or negligence of the persons interested in said suit or any of them;

(3) That certified copies of said record and files can not be obtained by the persons interested in said suit or any of them;

(4) That the substance of said record and files so destroyed was an original petition to the judge of the District Court of the Northern District of Florida, duly verified, filed in said court on the third day of March, A. D. 1875, setting forth that Theodore Dalcour, of Matanzas, of the island of Cuba; Auguste Dalcour, of Ellicott Mills, Maryland; Sophia Dalcour, wife of Theodore Sanchez, of Slavador, Cuba, joined by her husband; Theresa Dalcour, joined by her husband, Eugene Bolivier, of Lafayette Parish, State of Louisiana; children of Sophia *of* Susan Forbes; Stephen Tennant and Henrietta Tennant, of Lancashire, England; Blanche Tennant, joined by her husband, Robert Bruce, of Scotland, and Jules Fontena, of Bayone, France; children of Cammilla Dalcour, who was a daughter of Susan Forbes; Edward Depestre and Louisa Depestre, of the island of Cuba, and Julie Depestre, joined by her husband, Jose M. Gonser, of London, England, as petitioners, filed their petition or suit against the United States by virtue of the act of Congress approved June 22, 1860, entitled "An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes," and the extension of said act, praying for confirmation of title to them as the heirs of John Forbes of that grant of land made by the Government of Spain on the 10th day of January,

A. D. 1818, to John Forbes and Company, more particularly described as follows:

Commencing opposite to the mouth of Sweet Water Creek on
10 the Appalachicola River the line runs due west as far as the River Choctawhatchie, when it follows the course of said river to its mouth in the Bay of St. Rosa, then runs eastwardly along the shores of said bay and the sea (meaning the Gulf of Mexico) to the mouth of the Apalachicola River, and up said river to the place of commencement, being all the land between the Apalachicola River and the Chocktawhatchee, lying south of the township line dividing township one north from township two north, and containing the lands described on the United States surveys, as follows:

Township one north, ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 west.

One south, ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 west.

Two south, ranges 8 to 20 (inclusive) west.

Three south, ranges 8 to 17 (inclusive) west.

Four south, ranges 9 15 incl. west.

Five south, ranges 8 to 14 incl. west.

Six south, ranges 8 to 12 incl. west.

Seven south, ranges 8 to 11 incl. west.

Eight south, ranges 8 to 12 incl. west.

Nine south, ranges 7 to 11 incl. west.

That said petition further set out such other jurisdictional facts as it was necessary to allege to maintain the said suit in said court under the 11th section of said act of Congress approved June 22nd, 1860, and the act of June 10th, 1872, extending the same, and said petition had
11 attached thereto a plat of the United States survey of the lands claimed under the said grant according to the public surveys; a statement of the quantity of land in each township of the public surveys embraced in said grant; also an official statement made by the register of the United States land office at Gainesville of the whole area claimed and of the area thereof, which had, at about the date of the filing of said petition, been disposed of by the United States, and a statement of what area remained at said date undisposed of by the United States and treated as public land.

That said petition alleged the area within said grant according to the public surveys to be one million three hundred and seventy-five thousand six hundred thirty-seven $\frac{33}{100}$ acres; of which the *the* United States had disposed of was nine hundred and four thousand four hundred and sixty-two and forty-six one-hundredths acres of land; and alleged that four hundred and seventy-one thousand one hundred and seventy-one and eighty-six one-hundredths acres remained in possession of the United States undisposed of, not including the soil unde[illegible] Andrews Bay claimed to be a part of said grant; that with said pe[illegible] was a copy of the public survey of the lands claimed, made and certified [illegible] the surveyor-general of Florida, and also a copy of the report of the United States commissioners for the adjustment of land titles, which is printed in vol. 4 of the American State Papers, pages 95–96 inclusive; that said petition also prayed the confirmation of another grant of land made to John

Forbes for ten thousand acres of land, which grant is described in vol. 4, American State Papers, pages 221–262–283–464, and 465; for citation to be made upon the United States attorney for the Northern District of Florida and for judgment against the United States for the lands hereinbefore described, and a patent for such portions thereof as had not been theretofore disposed of by the United States and the issuance of script for such portions as had been disposed of by the United States and for general relief;

(5) That thereafter on the 14th day of December, A. D. 1878,
12 by leave of the court first had, said petitioners amended their said petition; that by said amended petition they joined as copetitioners, the following parties, to wit: Fanny W. J. Innerarity, as tutrix of Helen H. Innerarity, Louis Minor Innerarity, Emanuel S. Innerarity, Margaret Innerarity, and James J. Innerarity, of New Orleans, State of Louisiana, Fanny C. Innerarity joined by her husband, Cornelius E. Wykoff; Eloisa Innerarity joined be her husband James Wilson, of said New Orleans, State of Louisiana; Albert N. H. Innerarity, of Scott Station, State of Mississippi; Eliza Innerarity, widow of Louis Minor, of Norfolk, State of Virginia; James Innerarity, of Haidaye, France; Harriet F. Innerarity, joined by her husband E. Le Breton Deschappelles, Eliza Melanie Innerarity joined by her husband John S. Barton, of New Orleans, State of Louisiana; who alleged themselves to be descendants and heirs at law of James Innerarity, one of the partners of the firm of John Forbes and Company, suing in right of descent from said James Innerarity, Victoire Innerarity, Henrietta Innerarity, of New Orleans, State of Louisiana; Albert H. Huelse, of Bay St. Louis, State of Mississippi; Sarah Huelse as tutrix of her minor children John and Victoire Huelse, of Milton, State of Florida, and Emma Huelse Taylor, of Pensacola, State of Florida, who alleged themselves to be descendants and heirs at law of John Innerarity, the third partner of the firm of John Forbes and Company, and suing in right of descent from said John Innerarity; and alleged in the original petition that it had been by mistake alleged that the grant was made by Spain to John Forbes; that said grant had been made to John Forbes and Company; that at the date of said grant said copartnership consisted of John Forbes, John Innerarity, and James Innerarity, partners, equally, and that the petitioners named in said amended petition were the heirs of the persons composing the firm of John Forbes and Company; and said amended petition prayed the confirmation to said petitioners of the said grant made by Spain to John Forbes and Company, January 10th, 1818; that the peti-
13 tioners be declared the owners of such parts thereof as had not been disposed of by the United States and that certificates or script be issued to them for the part of said grant disposed of by the United States, according to the sixth section of the act of Congress approved June 26th, 1860.

(6) That there also existed an order of said District Court, made on the 14th day of December, A. D. 1878, allowing the said amendment of the said original petition; and a petition to said court for the issuance of a commission to take the testimony in said cause, and an order of the said court for the issuance of said commission to take testimony, and naming the commission; that said last-named order was dated Decem-

ber 16th, A. D. 1878, and directed that A. Abel, esq., of New Orleans, State of Louisiana, be appointed such commission to take the testimony of the witnesses Henrietta Lynd, Miguel De Eslava, and Manuel Garcia.

Copies of all said original papers are attached hereto and made a part of this petition.

(7) That it appeared by the record and files of said court that the United States had appeared in said cause, but whether or not any answer had been filed therein on behalf of the United States is to petitioners unknown.

(8) That the destruction of the record and files aforesaid, unless supplied, will result in very great damage to your petitioners, persons interested in the said suit.

Your petitioners therefore pray that your honor will consider this their supplemental petition and will set a day for a hearing thereon, and upon the said hearing being had (after due notice to the United States) and the facts set out herein proved to be true, will make and cause to be entered of record in said District Court of the Southern District of Florida an order reciting the substance and effect of said lost records and files and restoring the same.

14 And your petitioners will ever pray, etc.

W. W. DEWHURST,

As attorney for certain of the heirs and legal representatives of John Forbes, John Innerarity, and James Innerarity, copartners composing the firm of John Forbes and Company, the complainants, on behalf of themselves and others interested as or under the complainants or petitioners in said suit.

STATE OF LOUISIANA,
Parish of Orleans.

William H. Wilson, being first duly sworn, says that he is the son of Henrietta Innerarity, the wife of Henry Wilson, now deceased, who was one of the parties complainant in the suit pending the District Court of the United States for the Northern District of Florida on the 23rd day of July, A. D. 1894, entitled, as he is advised, "Dalcour et al. vs. The United States," which was instituted for the confirmation of a grant of land in Florida, made by the lawful authorities of the King of Spain on the 10th day of January, A. D. 1818, to John Forbes and Company; that he is a party interested in said suit by representation and inheritance by his mother, who was a daughter of John Innerarity and one of the complainants in said suit, and also as the representative in the making of this affidavit of others, children of the original complainants in said suit; that he has read the foregoing amended petition and is familiar with the principal facts therein set out, and he knows of his own knowledge of the institution of said suit within the time allowed by law and its pendency undetermined in said court; and he knows of his own knowledge that the substance of the facts therein set out are true; that as to the facts therein stated as to the destruction of the record and files of said District Court of the United States for the Northern District of Florida and the statements therein as to the papers and documents

attached to said original petition he is advised that the statements of said petition are true.

WILLIAM H. WILSON.

Sworn to and subscribed before me this 19th day of January, A. D. 1901.

[Notarial seal.] J. G. EUSTIS, *Notary Public.*

15 (Copy.)

To the honorable the judge of the District Court of the United States for the District of Florida:

The petition of Theodore Dalcour, of Matanzas, in the Island of Cuba; of Augusta Dalcour, of Ellicott Mills, in Maryland; of Sophia Dalcour, the wife of Theodore Sanchez, of Salvador, *of* Cuba, and of said Sanchez, as her husband; of Theresa Dalcour, the wife of Eugene B. Oliver, of Lafayette Parish, in Louisiana, and of said Eugene B. Oliver as her husband; all of whom are the children of Sophia or Susan Forbes, deceased;

And of Stephen Tennant and of Henrietta Tennant, of Lancashire, in England; of Leocadie Tennant, of Liverpool, in England; of Blanche Tennant, the wife of Robert Bruce, and of said Robert Bruce, of Scotland, and of Jules Fontena, of Bayonne, in France; all children of Cammille Dalcour, the daughter of Susan Forbes;

And of Edward Depestre and of Louisa Depestre, of the island of Cuba, and of Jule Depestre, the wife of Jose M. Gonser, of London, England, and of her husband, Jose M. Gonser.

Against the United States of America, respectfully shows,

That they each and all are descendants of John Forbes, who died at Matanzas, in the island of Cuba, in the year 1823, and that they are the only heirs of his body as appears from the following statement of facts and the affidavot annexed and marked (E), it being impossible to obtain information or evidence in regard thereto in Florida.

That John Forbes died at an advanced age in the year 1823, at Matanzas, in Cuba, leaving as his only heirs at law as well as his universal legatees by will his two daughters, then his only descendants, they were named or called by the English or Spanish, the family using both languages, Sophia or Susan Forbes, Junata, Juana, or Jane Forbes, being only heirs at law and universal legatees.

That these two daughters were recognized both as his legitimate and only heirs at law and universal legatees by the proper courts of Spain in Cuba, where they lived with their father at the period of
16 his death, and as such were placed in immediate possession of all property left by him in any of the Spanish dominions.

That Sophia or Susan Forbes married Francisco Dalcour. (Both are long since dead.)

They left surviving as only heirs five children, Cammilla Dalcour, since dead, leaving heirs stated below; Theodore Dalcour, Auguste Dalcour, Sophia Dalcour, and Theresa Dalcour. These four children of Sophia or Susan Forbes are now living and are parties to this proceeding.

That these five children of Sophia or Susan Dalcour inherited each one-fifth of one-half (or one-tenth of all the estate left by John Forbes), including Cammilla among them.

That Camilla Dalcour married Stephen Tennant, who died leaving of that marriage four children only, all of whom are now living and parties herein. She then married Jules Fontena, by whom she had one child only, Jules Fontena, junior, and afterwards she died. The children of Camilla Dalcour, are Stephen Tennant and Henrietta Tennant, of Lancashire, England; Blanche Tennant, wife of Robert Bruce, of Scotland; Leocadie Tennant, of Liverpool, England, born of her first marriage, and Jules Fontena, born of her second marriage.

That the five children of Camilla Dalcour inherit in equal shares and are entitled to have 1/5 of 1/5 of 1/2 of all the estate of John Forbes.

That Juniata, Juana, or Jane Forbes (the wife of Edmond Depestre, formerly of Cuba) is long since dead. She left three children surviving her, who are her only heirs at law. They are Edmond Depestre, Julia Depestre, the wife of Jose M. Gonser, and Louis Depestre, each of whom is entitled to the third of their mother's estate, or 1/3 of 1/2 of all the estate of John Forbes.

That you petitioners hereinbefore named (complainants and plaintiffs in this action) are the only heirs at law of John Forbes, and of his two daughters who are named above, and as such they are entitled by law to claim and have immediate possession of all property left by him at his death.

16½ That John Forbes died as stated in the year 1823, then owning, possessing, actually and legally and equitably, large bodies of valuable lands in Florida, no part of which has at any time come into the actual corporal possession of his heirs, nor has any part thereof at any time been disposed of by them or with their consent, actual or presumed or legally assumed and adjudged to be right.

That John Forbes owned a large body of land west of the Apalachicola in Florida, containing about one million eight hundred and fifty thousand acres, which in the grant (written in Spanish) is described substantially thus:

Commencing opposite to the mouth of the Sweet Water Creek on the Apalachicola River the line runs due west as far as the river Choctawhatchee, when it follows the course of said river to its mouth in the Bay of St. Rosa, then runs eastwardly along the shores of said bay and the sea (meaning the Gulf of Mexico) to the mouth of the Apalachicola River, and up said river to the place of commencement, being all the land between the Apalatchicola River and the Choctawhatchee lying south of the township line dividing township one north from township two north, and containing the lands described on the United States survey as follows:

Township one north, ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 west.

One south, ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 west.

Two south, ranges 8 to 20 (inclusive) west.

Three south, ranges 8 to 17 (incl.) west.

Four south, ranges 9 15, incl., west.

Five south, ranges 8 to 14 (incl.) west.

6 south, ranges 8 12, incl., west.

7 south, ranges 8 11, incl., west.

17 Eight south, ranges 8 12, incl., west.
Nine south, ranges 7 11, incl., west.

All of which will be more clearly understood by examining the map of said tract of land annexed to this petition or bill, showing its boundaries and the description of every part of it by the United States surveys of the same body of land, which includes within its limits the whole Bay of St. Andrews and its basins, branches, or arms, or it gives an exact description of the lands as they are known on the United States surveys and also the Spanish description in the grant.

That on the fifth of January, 1818 (that is, before the 24th day of July, 1818), at a time prior to the first intimation given to the U. S. that Spain was then willing to treat with the U. S. in regard to the cession of Florida, and when the Island of Cuba and East and West Florida belonged to Spain, and in fact was in her possession and was under the immediate control of Cienfuegos (the captain-general of Cuba), John Forbes, after trying and failing to obtain money from the Spanish or Cuban treasury to pay $100,000 indemnity to him, and failing because the treasury had no money, applied to the captain-general, by petition, for a grant of land described as above to be taken as indemnity for his losses; we would say repayment.

That upon receipt of this petition Cienfuegos, the captain-general of Cuba, had the petition referred to the assessor general and his legal advisor for advice, and upon a favorable report from them, and not sooner, made on the 10th day of January, 1818, he on that day made a formal grant to John Forbes of the land, described (in Spanish) substantially as translated above, had the same signed, made of record and deposited among the Government records.

The original grant being required to remain as a public notarial act, a copy, however, having the force of the original. See the copy reported to the secretary of state by the land commissioners for the Territory of Florida, IV Volume of American State Papers on Lands, pp. 95, etc.

18 That an appropriate copy of this grant was sent from the captain general of Cuba to Don Jose Massot, the governor of the province of West Florida, who, on the 23rd day of January, 1818, put John Forbes into actual possession of the lands described as above, when the grant to Forbes became complete, and he, John Forbes, and not the government of Florida, Cuba, or Spain, was in actual possession of the property, after which he was not at any time interrupted, but he had possession at the date of the treaty and on the day of delivery, etc., and although the state of his own health prevented any personal holding of the land his agents did possess it, as appears by proof of their acts before the courts of Florida given to the commissioners and reported by them as facts, which possession continued as a fact until John Forbes died. No one disturbed him.

Your petitioner now reiterating or summing up say that this grant was made by the captain-general of Cuba and East and West Florida, then the highest officer of Spain in America (or indeed anywhere), whose authority has been repeatedly acknowledged by the Supreme Court of the United States, and is judicially known without proof to any court of Florida or of the U. S. in Florida even if no proof thereof be offered or made. Whatever law once prevailed in Cuba is your own law. It was

made after fully taking advice from all proper subordinate officers, it was made for the sum of $100,000, claimed by Forbes to be due to him from the public treasury of Spain, Florida, and Cuba, and was received by Forbes as full payment of the claim for $100,000, both proved and admitted to be due to John Forbes, a sum so large that the whole of the grant then or at any subsequent time if sold in block or in detail would not bring that amount.

Your petitioners further show that each fact stated above except their own inheritance from John Forbes was shown, proved, or ascertained by the report of Samuel R. Overton, Jos. M. White, and Craven P. Luckett, commissioners for examining and ascertaining claims and titles to
19 land within the districts of East and West Florida, dated at Pensacola, Nov. 12, 1824, and transmitted to Congress of the U. S. Feb. 21st, 1825, printed by order of the Senate of the U. S. in the American State Papers Public Lands, Vol. IV, pp. 94–96, proving not only the possession of these lands given by Governor Massot in obedience to order, but that the agents of Forbes used the courts of Spain to protect that possession so long as they had power. It was acted upon by their court.

That by the law from which we derived the right to bring this action the facts ascertained by this report must be received by the court as proved, from which the assertions we have made appear fully and completely proved. These facts we now ask to restate in a more general manner.

That John Forbes did present to and urge against the Spanish Govt. his claim for very large sums of money, which claim for over $100,000 the captain-general admitted to be binding, but which the royal treasury was then totally unable to pay in money.

That under this state of fact John Forbes asked for the captain-general of Cuba a grant for the lands which we now claim to own, to be received by him as a full indemnity or payment for the losses he had sustained. (Indemnity for which he claimed from the Government.)

That the captain-general of Cuba, unwilling to trust his own judgment, submitted the matter to the legal adviser of his Govt., and after receiving this advice the grant was made and was received by John Forbes as payment in full of the indemnity which the Government was bound to make to him for the losses he proved he had suffered.

That the original grant, like all notarial acts in France, Spain, or Louisiana, is a part of and remains a public record A duplicate copy was sent at once to Governor Massot, the Spanish governor of West Florida, who obeyed it as the legal order of his own superior in office, without either delay or question placed the agents of John Forbes in the actual possession of the property we claim. Not only did he give possession then, but maintained such possession by removing intruders up to the delivery of the sovereignty of the provinces to the United States, and John Forbes retained a civil possession until he died in 1823.
20 That this possession Forbes held by his agents until after the change of government (the state of his own health first compelling his removal from his stone house near St. Marks to Cuba, and making it impossible to superintend the property personally). That the possession and title of John Forbes was specially protected by the 8th

article of the treaty of cession the Spanish (the language of the grantor) reads, "All grants of land made on or before the 24th day of January, 1818, quedaran ratificados, y reconcidas al la personas que esten in possession de ellas (or are confirmed to the persons in possession of them).

Your petitioners show that the commissioners' report referred to does find that Forbes was in actual possession and actually used the courts of the province (p. 96) and its officers to prevent trespassers on these lands up to the formal delivery of the U. S., and he had said possession as a cripple (unable to reach the lands he owns) can have, up until he died on 1823. His agents were always there.

That after his death his daughters, young and inexperienced, knowing nothing of the business of their father and little of his rights, were unable to continue the prosecution of the rights he had already proved; or really they knew nothing about it, and therefore when the report of Feb., 1825, was before Congress, they did not furnish proof of the powers of the captain-general of Cuba, but permitted their rights to slumber as he had left them, probably or almost certainly never hearing of the report on the claim of their father which they had inherited, provoked by the executors of John Forbes, who in another matter had been dismissed from court (such matters pertaining to his heirs).

That this grant thus made by the highest officer of Spain in America, a governor-general (governor of governors), made for a consideration much more than twice, or even ten times, its value, made after consultation with the assessor-general and his legal adviser, was transmitted simply as an order to a subordinate, himself possessing almost regal authority, and was instantly (without question as to his correctness or legality) obeyed as the order of a superior given in a matter wherein he had the right to order and not merely to advise.

The act thus done was acknowledged by the King of Spain and his officers up to the delivery, and is covered specially by the article
21 of the treaty binding the U. S. to respect, acknowledge, and protect the titles made by the proper officers of Spain.

Her own records and the acts of her courts in maintaining the possession of Forbes showing conclusively that the courts of Spain considered her bound to protect this title made to Forbes.

That under these circumstances the U. S. is bound in equity and in law and by every principle of honor regarded as binding among men to make good the claim of these heirs, and to protect it, and not to destroy it altogether by a further delay, and it was solely to fulfill such obligations that the act of Congress under which we act was passed.

That according to the surveys of the U. S. made and returned through the proper department there are 1,375,637.32/100 acres of land within said boundaries surveyed and reported as capable of ownership; besides this there is the shallow basin or bay known as St. Andrews Bay and its branches, every part of which is granted to John Forbes.

That by sale, preemption, grants, donations, or in some other manner the U. S. have disposed of and cannot now give back 904,462.46/100 acres of the land, and (they claim the bay of St. Andrews).

That there remains in kind unsold and not disposed of in any manner 471,174.86/100 acres of land, and besides the soil of St. Andrews Bay and its branches, which are unsurveyed (about 400,000 acres).

Ex. A. That a document marked "A" filed with this bill as an exhibit contains a summary statement of the quantities of land in each township; also what has been disposed of and what remains. This statement is made up by their counsel from other certificates also annexed, but does not contain the area of St. Andrews Bay in any of its calculations.

Ex. B. Your petitioners further show that document B, containing 14 sheets made out by the register or the land officer at Gainesville, gives a minute statement as to every part of the property so claimed, what its whole area was, what has been disposed of by the Govt., and what remains in kind, which document, certified by the register, we annex as Exhibit B.

That the whole amount of this land which the U. S. Govt. (as
22 shown by certificates) have placed out of their power and beyond their control is 904,462.46 100 acres, for which your petitioner' are entitled to have and receive land script in small bodies to be located at their pleasure or that of their holders according to law.

That we are entitled to have and recover besides this the 471,174.86 acres remaining in kind under the control of the Govt. now in their possession.

That besides this we are entitled to the ownership of the soil of St. Antrews Bay, our grant including by its terms every particle of its shores on every side, and the Gulf coast for many miles on both sides of its narrow, shallow, unnavigable entrance.

Your petitioners also annex hereto a map of the land for which we now sue, made by the surveyor-general of Florida, from one compiled for the use of the State's surveyor-general's office and duly certified by him, from which the reasoning herein presented will be more apparent.

Your petitioners further annex the report of Sam'l R. Overton, Jos. M. White, and C. P. Luckett, U. S. commissioners on land titles in Florida, being report No. 2 of the report of said commissioners, communicated to the House of Representatives on the 21st Feb., 1825, printed by the authority of the Senate as the Am. State Papers p, L, Vol. IV, pp. 94–96, which are made evidence by the acts of Congress. This book we now deposit in court as evidence as an exhibit to remain here on file as a record of court and to serve as exhibit herein.

Your petitioners further show that before this report was made by said commissioners, John Forbes had died (1823). His death was not known to the commissioners, nor were the facts now stated known to the children of John Forbes.

That the daughters of John Forbes, and since their death the grandchildren and descendants of John Forbes, did not know of the facts which entitled them to this land, because all original evidence connected with the transactions were in the hands of counsel in a foreign country, or of a notary in a distant city in Cuba. They did not know even how to investigate the matters in which they had an interest, and were not informed of their rights by him.

That under the laws of the U. S. specially provided for cases like
23 the present, they are allowed to sue the U. S. for the lands owned by them to recover judgment for the land remaining in kind, to recover land script for such lands as the Govt. has in any manner disposed of or placed beyond its control, and that service on the district attorney of the U. S. is necessary to bring them into court.

Your petitioners further show that at no time whatever has a report of *of* land commissioners been made adverse to their claim now presented nor any report suggesting fraud, favoritism, or forgery of any part of the evidence above set forth, nor has their claim at any time been presented to or examined by a court of law or equity, nor has it been acted upon by Congress at any time.

Because at the death of John Forbes in the year 1823, his two daughters were young; they had been long in a country where a different language was spoken, and amongst a people whose counsellors at law and learned men knew little of our laws, and they totally ignorant (even until I told them in reply to their communications) that the treaty of cession ought to preserve their rights.

They did not know what action to take or what possible even then.

That the claim now presented was never rejected by the commissioners referred to, but they merely refused to recommend the claim now presented to Congress for confirmation, because they doubted the power of the captain-general of Cuba to make so large a grant (we ought to say sale) without special authority from the Crown.

Complainants allege that this very question was examined by the captain-general before making the grant. He took advice from proper and legal officers and it was decided, and so the commissioners report.

That the acts of the captain-general of Cuba, after advice, like that of the Secretary of the Interior, after legal advice, are final, at least to their persons.

That the allegations that we have made are each and all proved by reports of facts made by the officers of the U. S., made evidence by law, printed by the U. S. and at their expense, and although not so complete in our favor as the facts might justify, yet amply prove our demands as the report referred to is evidence of the facts.

24 With such facts as we have presented we claim that the 8th article of the cession binds the U. S. to confirm the title of John Forbes to those lands of which we had possession under a title to all respects perfected at the date of the treaty. That the fact that the U. S. pointed out specifically the land titles in Florida which were objected to and canceled by Spain of itself waives all objection to others. (In the treaty they cancelled those claims and so confirmed the others)

Mitchell vs. U. S. 9 Peters That the authority of the captain general of Cuba to make grants of land in Florida, to review, confirm, set aside, or annul grants made by the local governors of Florida, has been repeatedly examined by the courts of Florida and must be known to this court as a part of the law of the land when the cessions are held, and no proof of the laws of Florida as they existed in past time can be required here.

That after the death of John Forbes (before it was known in Florida) his attorneys presented to the proper board of commissioners his claim to two tracts of other land on the headwaters of the little St. Marys River in Florida. Proof was taken by the board and they were severally recommended to Congress for confirmation (see vol. IV, 4 S. ps P-L pp. 221, 262, 283, 464, and 465) being another part of the volume annexed.

That proper surveys had been made of these tracts of land by Don

Geo. F. Clark, a Spanish surveyor (as early as 1814), copies of which which were furnished to the commissioners, and are now found in the office of the surveyor-general, copies of which we now file.

That by the act of Congress the claims of John Forbes and other claims were confirmed to the extent of one league square, the claimant renouncing the surplus. Unwilling to do this the heirs of John Forbes, his two daughters (then being Mrs. Dalcour and Mrs. Depestre), sued for the whole 10,000 acres, obtained a judgment against the Govt. for the whole 10,000 acres, but the Govt. appealed to the Supreme Court of the U. S. when the decree of the Territorial court was reversed and the bill of Mrs. Dalcour and Mrs. Depestre was dismissed because there was no survey definitely or properly locating the land, the survey of Don Geo. F. Clark did not locate the survey definitely or properly and it is now impossible to locate it.

25 That we are entitled to land script for the 10,000 acres to be taken and located in small bodies as the law directs.

That an inspection of the maps filed herewith obtained from the surveyor-general from an old Spanish survey in his office will show that a location at this day is utterly impossible, as the corners are all pines, were marked in 1814 and ever since then in a wilderness—no witness can possibly exist to point to a single corner from memory—no natural object is referred to but swamps and sloughs, which are not distinguishable. Wherefore under the late law they are entitled to script to be located in small bodies at their pleasure.

By the late laws this is provided for.

Ex. D. They annex a copy of the decrees in their favor made by the Territorial court and refer to the case of Forbes vs. U. S. 15 Peters.

Wherefore your petitioners pray that the U. S. be cited herein according to law.

That service of citation process or notice be made upon the district attorney of the U. S. for this district.

That such proceedings be had herein as are required by law, equity, and justice, and that after due proceedings they have a judgment against the U. S. as follows:

1st. For the land described in the grant to John Forbes commencing on the Apalachicola River to a point opposite the mouth of the Sweet Water Creek, and bounding on the north by a line running from said point directly west to the Choctawhatchie, down said river to the Bay or Sound of St. Rosa around the coast of said sound and the Gulf of Mexico to the mouth of the Apalachicola, and up said stream to its commencement, including within it the whole of the waters of the Bay of St. Andrews;

That all the titles derived by any persons, corporation, or State for portions of this body of land be confirmed to them, as against the plaintiffs, but that the plaintiffs have in lieu and stead thereof the same area of land script or warrant to be taken in bodies of not less than 80 acres, and that the plaintiffs now recover from the U. S. land script for nine hundred and four thousand four hundred and sixty-two 41/100

26 acres of land warrants, in bodies as desired by plaintiffs, according to the rules of the land office.

That at a patent issue to them for the land remaining unsold in the townships and their title be affirmed by the Government.

And further that they have judgment for the soil and waters of St. Andrews, being about 400,000 acres of salt water connected with the Gulf by a narrow, shallow inlet, and your petitioners pray a judgment for 10,000 acres of land script for other lands to be taken in bodies of 80 acres or larger, as we may cho'se, to be taken in consideration of the grants of 7,000 acres and 3,000 acres which can not now be located, which script may be located according to law.

Your petitioners pray for general relief and as in duty bound will ever pray.

(Sgd.) ALEX. T. STEELE,
Attorney and Counsellor at Law.

Alexander T. Steele, being duly sworn, says that he is attorney and agent for the parties named in the bill—that no one of the parties is resident of or now in the State of Florida, and that the facts stated except their heirship could not be known to them of their own personal knowledge; that as their agent he has thoroughly investigated every fact stated as fully as it is possible to do, and every assertion made herein including their relationship to John Forbes, is true, as stated, and using his knowledge, as individual and as a lawyer he has not the smallest doubt, they are entitled to the relief asked by them.

Sworn to and subscribed this the third day of March, A. D. 1875.

(Sd.) CHAS. F. FOSTER,
Clerk of the U. S. Dist. Court, Nor. Dist. of Fla.
By L. P. MYERS, *D. C.*

27 (Copy.)

In the District Court of the United States for the Northern District of Florida.

Amended Petition.

Theodore Dalcour, of Matanzas, in the island of Cuba, August or Augustin Dalcour, of Ellicott City, Maryland, Sophia Dalcour, the wife of Theodore Sanchez, of Salvador, Cuba, and Sanchez, as her husband, Theresa Dalcour, the wife of Eugene B. Olivier, of Lafayette Parish, in Louisiana, and said Eugene B. Olivier, as her husband, all of whom are the children of Sophia or Susan Forbes, deceased;

And Stephen Tennant and Henrietta Tennant, of Lancashire, in England, Leocadie Tennant, of Liverpool, in England, Blanch Tennant, the wife of Robert Bruce, and said Robert Bruce, of Scotland, and Jules Fontena, of Batonne, in France, all children of Camille Dalcour, the daughter of Sophia or Susan Forbes;

And Edward Depestre and Louisa Depestre, in the island of Cuba, and Julie Depestre, the wife of Jose M. Gonser, of London, England, and her husband, Jose M. Gonser, being the descendants and heirs at law of John Forbes, deceased, and the following named parties being the descendants and heirs at law of James Innerarity, deceased, or the husbands or representatives of such heirs, to wit:

Fanny W. J. Innerarity, Tutrix of Helen V, and Louis Minor Innerarity, Emanuel S. Innerarity, Margaret Innerarity, James I. Innerarity,

all of the city of New Orleans, Louisiana; Fanny C. Innerarity, wife of Cornelius P. Wykoff, and said Wykoff, as her husband, Eloisa Innerarity, wife of John Wilson, and the said Wilson as her husband, also of New Orleans, Louisiana; Albert H. W. Innerarity, of Scott Station, Mississippi, Elisa Z. Innerarity, wife of R. N. Boggs, residing near Pass Christian, Mississippi, and said Boggs as her agent; Eliza Innerarity, widow of Louis Minor, residing in the city of Norfolk, Virginia; James or Santiago Innerarity, residing at Haidaye, France, Harriet F.
28 Innerarity, wife of E. L. Breton Deschapelles, and the said Deschapelles as her husband, Eliza Melaine Innerarity, wife of John S. Barton, and the said Barton as her husband, residing in New Orleans, Louisiana;

And the following named parties the descendants and heirs at law of John Innerarity or the husband as representative of such heirs, to wit:

Victoire Innerarity, widow of W. P. Innerarity, Henrietta Innerarity, widow of Henry Wilson, both of New Orleans, Louisiana, Albert P. Hulse, residing at Bay St. Louis, Mississippi, Sarah Hulse tutrix of her minor children, viz:

John and Victoire Hulse, residing at Milton, Florida, and Emma Hulse, wife of L. B. Taylor, residing at Pensacola, Florida,

vs.

The United States of America.

The above-named petitioners come and file the foregoing amendments to the original petition herein by adding the following sentences which are to be included therein and inserted immediately before the prayer thereof and made a part of said petition except so far as they are inconsistant therewith and by superseding said prayer by the one hereinafter contained.

(1) Petitioners aver that it was by mistake and error that the grant of land first set up and described in the original petition was described and stated to be a grant to John Forbes, and they now aver that said grant was made to John Forbes and Company, a commercial partnership existing at the date of said grant.

(2) That at the date of said grant said partnership was composed of John Forbes, who was the principal partner, of James Innerarity and John Innerarity.

29 (3) That in the absence of any knowledge on their part and of any evidence to the contrary, the petitioners aver and admit that the interests of each of said three parties in said grant was one undivided third.

(4) That the petitioners named in this amended petition as the descendants of said Forbes are entitled to one-third in said grant, they being his descendants and true heirs; that the petitioners mentioned in said amended petition as the descendants of James Innerarity are the true heirs of said James Innerarity and are entitled to one-third interest in said grant to John Forbes and Company.

That the petitioners mentioned in this amended petition as the descendants of John Innerarity are the true heirs of said John Innerarity and are entitled to one-third interest in the said grant to John Forbes and Company.

(5) That the petitioners one and all renounce and withdraw all claim

founded upon and arising out of any other or different grant or grants mentioned in the original petition; that is to say, they renounce all claim upon any grant therein mentioned, except upon the grant therein first mentioned, made January 10th, 1818, and described in Vol. IV, State Papers, Public Lands, pages 94–95 and 96.

(6) That the lands so granted as aforesaid January 10th, 1818, have not been and were not in possession of or cultivated by the original claimants John Forbes and Company, or any of said partners of said firm, or those holding title under them, or any of them, for a period of so much as twenty years prior to the commencement of this suit or proceeding, and have not been since in the possession of or cultivated by said firm or any of the said partners or by anyone holding title under them or any of them.

30 Wherefore your petitioners pray that whereas the United States have already appeared in this suit the title of your petitioners may be declared valid and binding upon the United States to and for the lands described in the aforesaid grant of January 10th, 1818, to wit:

The land situated in the present State of Florida and bounded and described as follows:

Commencing on the Apalachicola River at a point opposite the mouth of Sweet Water Creek and bounded on the north by a line running from said point directly west to the Choctawhatchee, down said river to the Bay or Sound of St. Rosa, around the coast of said sound and the Gulf of Mexico to the mouth of the Apalachicola and up said stream to the point of commencement, including the whole of the waters of the Bay of St. Andrews;

That the above-named petitioners may be declared the lawful owners as heirs of John Forbes, James Innerarity, and John Innerarity such parts of said above-described land as have not been disposed of by the United States after the same shall have been ascertained by proper evidence, they pray that land script or certificates of location may be awarded to them to the extent of the claim and land interferred with according to the sixth section of the act of Congress of June 22nd, 1860, to be located upon any lands of the United States subject to private entry at one dollar and twenty-five cents per acre, and your petitioners pray for such general relief and equity as they may be found and held entitled to.

L. D. OLIVIER.
EUG. B. OLIVIER.

31 STATE OF LOUISIANA,
Parish of Iberia:

Theresa Dalcour, wife of Eugene B. Olivier, by me being sworn, says that she is one of the plaintiffs in the above-entitled cause; that she has read the foregoing amended petition and knows the contents thereof, and that the statements contained in the same are true to the best of her knowledge and belief.

Sworn to and subscribed to before me at New Iberia, Louisiana, this 24th day of October, 1878.

[L. S.]

W. D. MERCHANT,
U. S. Com'r, Dist. of La.

WM. ARCHER COOKE,
Solicitor and Counsel for Petitioners.

(Endorsed on the back:) No. 4. U. S. Dist. Court, Northern District of Fla. Forbes Heirs vs. U. S. Amendments to the petition. Filed Dec. 14th, 1878. P. Walter, clerk.

32 (Copy.)

SATURDAY MORNING, *December 14th, 1878.*

Court met pursuant to adjournment.
Present, Hon. Thomas Settle, judge.
Court was opened in due form by the crier.

THEODORE DALCOUR ET AL., *vs.* THE UNITED STATES. } In equity. December term, 1878.

On reading and filing the petition of the plaintiff herein praying that the heirs of James and John Innerarity may be made parties complainant to this bill, and also that the *the* original petition may be so amended that it may alleg'e that the grant therein set forth was a grant to John Forbes and Company, and that James and John Innerarity were partners of said John Forbes.

Ordered that said prayer of said petitioners be granted subject, however, to the right of the United States to file such exceptions to this action as it may be advised.

Also reserving the right to all other persons interested in this litigation to take such exceptions as they may be advised and saving to the United States all rights and exceptions which may arise under the stat. of lims.

(Sd.) THOMAS SETTLE, *Judge.*

33 (Copy.)

MONDAY MORNING, *Dec. 16th, 1878.*

THEODORE DALCOUR ET AL. *vs.* THE UNITED STATES. } In equity.

On reading and filing the affiavits of S. D. Olvery and E. N. Olvery stating that Henrietta Lynd, Miguel de Eslava, and Manuel Garcia are material witnesses on behalf of the complainants, and that they are aged, feeble, and infirm, and reside more than 300 miles from the jurisdiction of this court, and if their testimony is not taken there is danger that they may die or become unable to testify;

Now, therefore, on motion of William Archer Cocke, esq., sol'r for complainant,

Ordered that a com'n do issue out of the office of the clerk of this court to A. Abet, esq., of the city of New Orleans, State of Louisiana, empowering him to take the depositions of the said witnesses, de bene esse, under the rules of the court on giving 30 days' notice to J. B. Stickney, esq., U. S. atty., of the time and place of taking such depositions.

(sd.) THOMAS SETTLE, *Judge.*

34 (Copy.)

United States District Court, Northern District of Florida, sitting at Tallahassee, Florida.

HEIRS OF JOHN FORBES
vs.
THE UNITED STATES.

To the honorable the judges of the District Court of the United States, sitting in and for the Northern District of Florida at Tallahassee:

The petition of intervention of Santiago Innerarity, residing at Bayonne, in France, son and heir of James Innerarity, of Virginia Minor, a widow, a daughter and heir of James Innerarity, residing at Norfolk, Virginia; of Eliza J. Innerarity, wife of Robert N. Boggs, and Robert N. Boggs as her husband; of Albert H. Innerarity, of the State of Mississippi, son and heir of James Innerarity; of Eliza Innerarity, wife of John Wilson, of New Orleans, and of John Wilson as her husband; of Henrietta Innerarity, wife of E. Le Breton, of New Orleans, of E. Le Breton as her husband; of Fanny E. Innerarity, wife of Cornelius C. Wykoff, of Cornelius C. Wykoff, of New Orleans; of Fanny W. Johnson, widow of John F. Innerarity, son of James Innerarity, acting as tutrix of her minor children, heirs of John F. Innerarity, and through him, of James Innerarity, his father, which minors are named Louis Minor and Helena Innerarity; of Emanuel S. Innerarity, of Margaret Isabel Innerarity; and of James Innerarity, children of James Innerarity, the partner of the firm of John Forbes and Co.; of J. A. P. Hulse, grandson and heir of John Innerarity; of Victoire Innerarity, widow of Henry Wilson, of New Orleans, children and heirs Innerarity, who all join herein and sue for their own benefit and also for the benefit of any descendant of John and James Innerarity who may not be mentioned or may not join herein, and for the relief they ask respectfully show:

35 That the grant of land between the Apalachicola and the Choctawhatchee for which the heirs of John Forbes have sued was made to John Forbes and Co., was made for the debts or indemnity due to John Forbes and Co., and although the legal title was in John Forbes the consideration was furnished by John Forbes and Co.; or, in other words, the grant was made to John Forbes and Co., without mentioning their names separately, to pay a debt due them by the Government.

That the legal title by the laws of Spain was in John Forbes alone, but he was equitably and morally bound to share this land with John and James Innerarity, according to their interest in the partnership of John Forbes and Co.

That John Forbes owned 2/3ds of the capital of the partnership and John and James Innerarity owned each one-sixth, or one-third for the two.

They show that their right is equitable, but they are assured that the heirs of John Forbes, whenever it is possible, will make their equitable title fully legal.

They ask to be permitted to intervene and that their equitable right be acknowledged by the court as heirs of John Innerarity and James Innerarity, leaving a settlement of their rights among themselves to be made by themselves.

They ask that a judgment be rendered in favor of complainants for the whole amount which they claim, merely recognizing the right of intervenors for an account for one-third from them.

They ask for equitable relief, joining in complainants' prayer.

(sd.) ALEXANDER T. STTELE,
Attorney.

(Endorsed on back:) "(Copy.) Supplementary petition in re. Forbes Heirs vs. U. S. Presented Feb. 11–1876. Denied."

36 The report of the United States commissioners for determination of land titles in Florida, being report No. 2, printed in vol. 4, pp. 94–96, of the American State Papers, is stated, in the original petition sought to be restored, to have been deposited in court.

If the volume was actually deposited, counsel for petitioners will not encumber the files with a copy of this printed volume except upon the order of the court, but will ask leave of the court to file with this petition a copy of the report upon the claim of John Forbes and Co., being report No. 2, pages 94–96 of said volume.

W. W. DEWHURST,
Attorney for Petitioners.

The copy of the list of lands within the bounds of the grant to John Forbes and Company, certified to by J. Lee, register of the United States land office at Gainesville, being a bulky document, is attached to this amended petition by a cord for convenience.

W. W. DEWHURST,
Attorney for Petitioners.

(Indorsed on the inside of the cover of the foregoing is the following:) "On the 26th day of January, A. D. 1901, I served a copy of the within petition and attached documents (except only the map attached), in the suit of Dalcour et al. vs. The United States, upon Hon. J. N. Stripling, United States attorney for the Southern District of Florida, by leaving the same during office hours in his office, in the city of Jacksonville, with I. A. Zacharias, asst. U. S. district attorney, an employee in said office. John F. Horr, U. S. marshal. By Percy C. Stickney, chf. O. deputy."

37 (Endorsed on back of cover:) "District Court of the United States, Southern District of Florida. Dalcour et al. vs. The United States. Amended petition for restoration of record. Filed Jan. 26, 1901. E. O. Locke, clerk. W. W. Dewhurst, atty. for petitioners."

38 [From District Court Minute Book, "C," pg. 281. Southern District of Florida.]

Regular term, U. S. District Court, So. District of Florida, January 15th, 1901. Tuesday.

Present, Honorable James W. Locke, judge, the officers, crier, and bailiffs.

Ordered, that court *court* be opened.

Whereupon court is opened by due proclamation.

* * * * * * *

THEODORE DALCOUR ET AL.
vs.
UNITED STATES OF AMERICA.

Now comes the plaintiff and moves for leave to amend his petition, which said motion is granted. Also order is entered herein allowing the opening of the depositions returned from Canada. (See D. C. O. B.)

* * * * * * *

Attest:

E. O. LOCKE, *Clerk.*

38½ [From the minutes of the District Court of the United States for the Southern District of Florida, held at Jacksonville, in said district, on Thursday, February 7th, 1901.]

* * * * * * *

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES. } Petition for restoration.

Now comes petitioners herein by their attorneys and move the court for leave to amend the amended petition, which said motion being argued by the respective counsel is submitted, and upon consideration thereof the following order is made, viz:

Ordered, that the within motion be granted and the written stated amendment to the petition herein filed made.

Ordered, that court adjourn till the 8th inst., at which time the officers and bailiffs shall attend.

And court is adjourned as ordered.

Attest:

E. O. LOCKE, *Clerk.*

Page 295, Minute Book "C."

39 [Extract from minutes.]

Adjourned term U. S. District Court, So. District of Florida.

FEBRUARY 9TH, 1901.

Present, Hon. James W. Locke, judge:

* * * * * * *

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES. } Petition for restoration.

This cause being presented by attorney for petitioners for hearing on motion for restoration of lost records, upon the testimony of witnesses, the hearing is objected to by the attorney for the United States upon the grounds of not having sufficient notice; which said objection is overruled and the testimony of E. O. Locke, Philip Walter, P. C. Stickney, Mrs. Janin, and Mr. McCabe is taken, who are duly sworn and testify in behalf of the plaintiff.

And the matter is argued and submitted.

* * * * * * *

From page 295, Minutes U. S. Dist. Court. So. Dist. Fla. Vol. "C."

* * * * * * *

The testimony and proceedings are as follows:

40 [Testimony.]

In the United States Court, Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES.

JACKSONVILLE, FLA., *Feb'y 9th, 1901.*

Before Hon. J. W. Locke, U. S. District Court Judge.

Mr. DEWHURST. I have left out one name, which I would like to interline—the name of William H. Wilson, of New Orleans.

(Permission was granted by the court.)

E. O. Locke produced as a witness on behalf of petitioners.

Mr. STRIPLING. We object to the proceedings to take testimony at this stage of the proceeding upon the grounds:

1st. There has been no proceeding pending in this court to re-establish these papers until the 7th inst., of which the United States were compelled to take notice; as we contend the suit was instituted on the 7th inst.

2nd. Upon the ground that we have not had the notice required by the Revised Statutes in such case.

3rd. The papers and exhibits now on file with the so-called amended petition are voluminous and badly written, so that it has been impossible for me to make a thorough investigation of the merits of the case, and I am not in a position to proceed intelligently. By an examination of these records your honor will see there are a number of papers filed as exhibits which are difficult to read. There is no issue before the court. We are not in position to deny whether such suit was in existance, or whether any papers ever existed, and in the investigation now proceeding we are at a great disadvantage, because we are not in position to properly examine the witnesses.

41 I call your honor's attention to the fact the original petition in this case did not entitle the petitioner to the relief they now demand; the court could not have made any order on that petition, even assuming it was in the name of the correct parties; the allegations were too vague and meagre to enable the court to make any order at all. Subsequently Mr. Dewhurst has filed an amended petition, which is fuller than the original on' in general form, in which all these exhibits are presented, but even in the form of his amended petition the Government are not compelled to take notice of it, because the court could not make any order on it. And we have now only had less than two days in which to examine these records. And admitting as a matter of courtesy, I might have gone on and examined this from time to time, I was not required to do it, and we would like to have a reasonable time in which to familiarize ourselves with this case, in order that we may intelligently cross-examine any witnesses that are brought.

Mr. DEWHURST. As the stenographer is taking this testimony for preservation, I ask that he be sworn.

By the COURT. They have been before the court in some shape or other for some time.

Mr. STRIPLING. I appear expressly for the purpose of objecting to the jurisdiction.

By the COURT. There is an issue before the court whether or not there was case pending and whether the papers have been destroyed; that is the issue, and the burden is on the petitioner to satisfy the court. The objection is overruled. The Government is not required to take any proceedings—the party comes in and the Government has had notice; the burden of proof is on the petitioner and he has to make his case; only the district attorney having notice of it can take part as he sees fit. The refusal of the Government in this proceeding does not prevent the petitioner from proceeding. There is no objection on the ground of the Government not having notice.

42 Mr. STRIPLING. Yes; not had notice required by the statute.

By the COURT. We will proceed, subject to any questions of law which may hereafter come up.

Mr. STRIPLING. I did not know any witnesses would be brought here, until I was advised of the fact by Mr. Dewhurst in open court, and the witnesses present.

Mr. DEWHURST. The principal witness in the case, Mr. McCabe, was brought because of the objections of the district attorney, the interrogatories were not sufficiently definite for him to cross; brought here simply to meet his objections.

The stenographer, H. H. Brown, esq., was then duly sworn to truthfully transcribe the testimony.

E. O. LOCKE, being duly sworn, testifies as follows:

Direct examination by Mr. DEWHURST:

Q. Will you please state your official position in connection with this court?

A. I am clerk of the U. S. Circuit and District Courts.

Q. How long have you been clerk for the Southern District of Florida?

A. Since 1872.

Q. How long have you been such clerk in Jacksonville?

A. August, 1894.

Q. Have you been such clerk successively since the change of the judicial boundaries of the Southern District of Florida—since the act of July, 1894?

A. I have.

Q. Please state whether or not you have made search among the records and files of the District Court of the United States for the Southern District of Florida, to ascertain whether or not there exists among those records the files in the suit of Dalcour et al. against The United States.

A. I have made such search.

Q. State the result of your search.

43 A. Find nothing in the files and on the records.

Q. Will you state the earliest files you find in Jacksonville on the records of the Southern District?

A. It was some time in 1891—I think the last. I will say there are some miscellaneous papers—a few scattered papers here antedating that time—which were saved, not being in the clerk's office perhaps at the time of the fire; but the general bulk of the papers only go back to 1891.

Q. What fire do you speak of?

A. I have no personal knowledge of it.

Q. What fire do you refer to?

A. The fire which destroyed the building in which the U. S. clerk's office was situated in the Mohawk Block.

No cross-examination.

PHILIP WALTER, produced as a witness on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination by Mr. DEWHURST:

Q. State your name.

A. Philip Walter.

Q. What connection have you now or did you have with the District Court of the United States for the Northern District of Florida?

A. I was clerk of the District and Circuit Courts for the Northern District at Jacksonville from 1874 to 1894—about the 1st of August, 1894.

Q. As clerk of the U. S. District Court of Florida for the Northern District of Florida, did you have any connection with a suit entitled Dalcour, or Theodore Dalcour et al., against The United States of America?

A. The only connection I had with it was to file the papers as clerk.

Q. Have you any recollection of filing papers in the case in that court?

A. I do.

Q. Can you recall the character of any of the papers which you filed in that case?

44 A. Yes; I filed a petition and some schedules of land and a copy of the State Papers.

Q. Can you recall whether any of the papers were filed in the case by any other clerk of that court, at any other point besides Jacksonville?

A. Some of them were filed at Tallahassee by Mr. Foster, who was at one time clerk there. I think I filed some there also before Mr. Foster was clerk. He succeeded me at Tallahassee when I came to Jacksonville. I once also filed some papers at Pensacola brought over by one of the attorneys from New Orleans.

Q. Do you remember an attorney at law by the name of Alexander Steele?

A. Very well; I think he is a man pretty hard of hearing.

Q. Do you remember whether he had any connection with this case *case* of Dalcour et al. against The United States?

A. Yes; he was one of the attorneys at one time; I don't know whether he succeeded some one, or some one succeeded him.

Q. He was an attorney in that case?

A. Yes.

Q. Do you remember Mr. Edward Janin, of Washington?

A. Yes.

Q. Do you remember John B. Stickney?

A. Very well.

Q. Do you know whether he had any connection with the case?

A. No; I don't know, except that he was U. S. district attorney, and I suppose represented the Government; I don't remember it.

Q. To the best of your recollection what was the general character of the papers in the suit of Dalcour et al. against The United States, as to whether they were small papers, folded like this [exhibiting a legal document] or more extended papers?

By the COURT. The best of your recollection.

A. I do recollect there were a number of very large papers, and a great number of small papers; there was an entire box full in that case, kept by itself.

Q. Do you remember whether or not there was a list of lands certified to by J. C. Lee, the registrar of the land office?

45 (Objected to by the district attorney.)

Q. State as near as you can what papers were filed in the case.

A. There was a petition; a copy of the State Papers, and there was some answers; some subpœnas, and some commissions issued; and there was one or two or more lists of land sent up from the U. S. land office—there was loads of papers.

Q. Will you look at this volume, which is a volume of the American State Papers, vol. 4, and see if you can state whether or not the volume that was filed in that case is a similar volume?

A. It is a similar volume, but this is not the one that was filed; it was a little more square, a little wider, and its back was torn off.

Q. But it was vol. 4, of the American State Papers?

A. Yes.

Q. Look at the exhibit, which is the exhibit attached to the testimony of the witness William McCabe——

By the COURT. Inquire first whether he can identify the papers. As to that original petition in the case, can you recall any particulars as to that petition?

A. I think possibly if I saw it I can; I could not say; I think it was 25 years ago it was filed.

Q. Have you any recollection as to the parties named in the petition?

A. I might have if I had the papers, but from recollection I can not say.

Q. Can you recall who brought the petition as attorney?

A. No; I rather think though it was Mr. Steele, but I am not positive about that. I know he was an attorney, and there were others. I don't know but what Mr. McCabe at times was connected with it.

Q. A petition is filed in evidence with Mr. McCabe's——

(Objected to.)

By the WITNESS. I would state my recollection of it. The paper was very much larger than the petition—had a whole lot of exhibits to it, and the whole thing was filed as one original—larger than the piece of paper you had in your hand.

46 Q. And those exhibits were filed, too?

A. Yes.

Q. You have stated that you recollect the making of orders in the case of the issuance of a commission?

A. Yes.

Q. Can you remember whether or not you issued a commission in the case?

A. I did, several commissions, I think; but I can recollect one particular one.

Q. Can you remember to whom you issued it?

A. A gentleman by the name of Abet, a gentleman in New Orleans.

Q. Can you remember the character of any order made in the case?

A. I might remember if I saw the orders, but I had no reason to charge my mind with anything 25 years ago. I made a number of copies of different papers.

Q. Can you remember whether or not Judge Settle, as judge of the court, made any order in the case?

A. Yes; I think Judge Settle ordered that commission to issue. It is a pretty old case; I think it commenced in Judge Frazier's time.

Q. (Witness handed the exhibit attached to the testimony of William McCabe, Exhibit G, purporting to be a copy of the order of Thomas Settle in the case of Theodore Dalcour et al. agst. The United States, ordering the issuance of a commission to Abet, of New Orleans.) Do you remember such an order as that made by Judge Settle?

(Objected to.)

A. I have already said that there was such an order made. I could not state the date of it, the 16th or 17th of Jan'y. I know a similar order was made by Judge Settle, and I did send the commission to New Orleans, and received the testimony back. As to the date of it I can not say.

Q. You have stated that you filed certain petitions in the case; do you remember whether or not you filed an amendment to the original petition in the suit, on or about the month of December, 1878?

47 A. I would state all I can remember about it is, there were probably one or two or three amendments to the original petition filed, but the date or time I know nothing about.

Q. Do you remember an order allowing an amendment made by Judge Settle in the case?

A. I do not remember the order.

Q. Can you state whether or not those papers were in the building used by the U. S. court-house in Jacksonville at the time that building was burned?

A. They were.

Q. Whereabouts in the court-house were they?

A. In the clerk's office right against the wall near the front door, and always kept there in a cedar box, of which the Government had 24 at one time.

Q. How many of those boxes were in the court-house at that time?

A. They were all there, except, I think, two, and I think they are here now somewhere in this court.

Q. Was this suit pending, undetermined at that time?

A. I suppose that is a question of law; that case was there.

Q. Have you any recollection or knowledge of the dismissal or discontinuance of the case?

A. I have not.

Q. Do you know whether Alexander Steele is living?

A. I do not.

Q. Do you know whether Mr. Janin is living?

A. I have heard he is not.
Q. Do you know whether John B. Stickney is living?
A. He died in Washington sometime in the early 80's.
Q. Do you know William Archer Cock?
A. I do.
Q. Do you know whether he had any connection with this suit?
A. It was of record in the case; I think for the plaintiffs.
Q. Do you know whether he is living?
A. He is not.
Q. How long since he died?
A. Several years; died, I think, at Sanford.
48 Q. Can you state approximately the time he has been dead?
A. No.
Q. Is it ten years?
A. I don't think as much as that; I should not think it was over 7 or 8 years; it may be.
Q. Do you remember Mr. Cock's connection with public affairs in '76 in this State?
A. Yes.
Q. How long after that do you think he died?
A. I should think it was a good while after; think he was attorney-general in '76; after that was circuit court judge. I think he was on the bench quite awhile—served 7 years out—and then he practiced law after he went off the bench.

Cross-examination by Mr. STRIPLING:

Q. Please give the style of the cause, as nearly as you can recollect, about *about* which you have testified.
A. Theodore Dalcour and others against The United States.
Q. Do you remember the names of any of the complainants in the suit?
A. Not right now; if you mentioned some of them I probably should.
Q. What was the character of the paper which you say was filed as the original petition?
A. It was a petition with a whole lot of exhibits.
Q. For what purpose?
A. To the best of my recollection it was a suit or petition to have the United States set aside certain land which they claimed.
Q. Did you ever read the petition?
A. I suppose I did when I made copies of it personally.
Q. For whom?
A. I think I made one or two copies for the United States; I made a copy for different parties.
Q. You recollect whether or not any process was issued on that petition?
A. Yes; process was served.
Q. What kind of process was it?
A. There was a notice to the district attorney.
49 Q. What did the notice contain?
A. I don't know; my best recollection is now they would call it up for hearing on a certain day.

Q. Was that notice signed by you or the attorney?
A. Both; I think by the attorney and certified by me as clerk under seal of the court.
Q. When was the suit commenced?
A. I don't recollect; I stated I thought it was commenced in Judge Frazier's time.
Q. Were you clerk under Judge Frazier?
A. I was.
Q. When did Judge Frazer cease to be judge?
A. Sometime in the part of '76 in my impression.
Q. Who succeeded Judge Frazer?
A. Judge Thomas Settle.
Q. Do you remember the last order that was made in that case?
A. No; I don't know which was the last or first.
Q. Were you required during that time to make report to the Washington office of the cases in the United States courts and their condition?
A. No; the district attorney made them.
Q. You never reported the case to the Attorney-General?
A. I suppose I made out a list of the cases pending, but gave no information as what its condition was.
Q. You say there was commission issued to Abet to take testimony; do you remember the names of the witnesses?
A. No; I do not.
Q. Was testimony under that commission taken?
A. Yes.
Q. Was it received by you as clerk?
A. Yes.
Q. The testimony of how many witnesses was taken?
A. I think several—quite a number; my best recollection is quite a number of witnesses.
Q. Was the testimony that was sent back to you voluminous?
A. Rather; my best recollection is about the size of that largest paper.
50 Q. About how many pages of legal cap paper?
A. A couple of hundred, probably; I am only guessing at that.
Q. You use a couple of hundred as an approximation?
A. That is all.
Q. Do you know when the building in which the U. S. court and clerk's office was was destroyed by fire?
A. Either the 18th or 19th of May, 1891.
Q. How long previous to that time had it been since any action was taken in that case?
A. I should think several years.
Q. Nothing had been done for several years in the case?
A. Nothing, to my recollection. It was about ten years ago since the court-house burned.
Q. Were you personally acquainted with any of the plaintiffs in this suit?
A. I can not say unless I saw the names.
Q. Did you know Theodore Dalcour?
A. No, sir. I don't know whether any of the attorneys were plaintiff in the case; I know all of the attorneys, pretty much.

Q. Did you know Elizabeth Innerarity?
A. It seems to me there was one person of that name came to the court, but I am not positive about that now. I recollect very well writing her name in copying the papers.
Q. Did you know John S. Barton?
A. No, sir.
Q. Do you know whether Eliza Innerarity was related to John Barton?
A. I do not.
Q. Did you know Eliza I. Minor?
A. I don't think I do.
Q. Did you know Louis Minor?
A. No, sir.
Q. Did you know Emma Hulse Taylor?
A. No, sir.
Q. Did you know William H. Wilson?
A. Did he live in Orange County?
Mr. DEWHURST, of New Orleans.
51 A. No, sir.
Q. Did you know Le Breton Des Chapelles?
A. No, sir.
Q. Did you know Harriet Des Chapelles?
A. No, sir. I think there was one of those ladies I saw come in the U. S. court, but I could not say which one it was.
Q. You are quite sure a commission issued to a man named Abet at New Orleans, and that he returned the testimony of a number of witnesses?
A. I am sure the commission issued, and that he returned some testimony; how many witnesses I don't recollect.

PERCY C. STICKNEY, called as a witness on behalf of petitoiner, being duly sworn, testifies as follows:

Direct examination by Mr. DEWHURST:

Q. Will you state your name, please?
A. Percy C. Stickney.
Q. Who was your father?
A. John B. Stickney.
Q. Will you please state whether he is living or deceased?
A. He is deceased.
Q. What was the date of his death?
A. He died about October or November, 1882.
Q. What official position did he hold?
A. He was U. S. district attorney for the Northern District of Florida.
Q. Was he the incumbent of that office at the time of his death?
A. Yes, I think he was.
No cross-examination.

PHILIP WALTER recalled.

By Mr. DEWHURST:

Q. In your cross-examination you stated that you recollect the issuance of a commission by you to A. Abet, notary public, New Orleans,

and also the return of that commission here; I ask you whether your recollection of the return of the commission is as distinct as your recollection of the issuance of the commission?

A. No, it is not as distinct. The reason I think I am correct, I believe it was brought over by one of the attorneys from New
52 Orleans and filed.

Q. But upon the matter of the issuance of the commission you are positive?

A. Yes.

Q. On the matter of the return of the commission you may be mistaken?

A. It is 30 years—but I think I am correct.

Mrs. JANIN, produced as a witness on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination by Mr. DEWHURST:

Q. Will you state your relation to Mr. Edward Edward Janin?

A. I am his wife.

Q. What was his occupation?

A. He was a lawyer and attorney.

Q. Where was his residence?

A. In Washington.

Q. When were you married?

A. In October, 1877.

Q. Is Mr. Janin living?

A. No.

Q. When did he die?

A. May 17th, 1891.

Q. What was the condition of Mr. Janin's health during the latter part of his life?

A. He was paralysed for about seven years of his life.

Q. What effect had that upon your knowledge of his business affairs—in connection with his business affairs, if any?

A. I had to help him a good deal. Mr. Janin was a very unsocial man, and went about but little; he used to talk over his business matters with me a good deal; he did not care for anything but his work.

Q. Will you state whether you acted as amanuensis or clerk for any length of time?

A. I did after his illness; he could not write for some time.

Q. Did you write letters for him?

A. I did.

Q. Did you read his correspondence?

A. Yes.

Q. State whether or not you know of his connection—if he had any connection—with the case of Theodore Dalcour and others against the United States?

A. He was principal attorney in that case. He employed, I
53 think, other people to help—Messrs. Fleming & Daniel.

Q. In what State was that suit?

A. Here in Florida.

Q. Have you any knowledge of what court it was in?

A. I have written a good many papers; I think it was Theodore Dalcour et al., for the Northern District of Florida.

Q. Do you know whether your husband kept a docket of his cases?

A. Yes.

Q. You know whether he made entries from time to time in that docket of cases?

A. Of the progress of cases, yes.

Q. Will show you this book and ask you if this is your husband's book [book shown witness]?

A. Yes.

By the COURT. Been in your custody and keeping ever since?

A. Yes, always.

Mr. DEWHURST:

Q. (On page 156 of this docket an entry is shown the witness.) Is that in the handwriting of your husband?

A. It is.

(Page 156 offered in evidence.)

Q. On page 157 state whether or not that entry is in your husband's handwriting?

A. Yes; it is all in his handwriting.

Q. On page 170, is that in your husband's hand writing?

A. Yes.

Q. On page 225?

A. Yes.

Q. And also the entry which appears 224?

A. Yes.

Q. Do you know of your own knowledge the time at which Mr. Janin became connected with this suit of Dalcour and others against the United States in Florida?

A. After our marriage, and I think it must have been '78 & '79, but I am not sure.

Q. Were you ever in Florida yourself before this?

A. Whenever he traveled I traveled with him, and I came with him twice on this business.

54 Q. Can you recall the earliest time you came to Florida with him on this suit?

A. We came once in August—I remember it was very hot—I think '79, and then I came with him another time, and that was in the winter time. He went over to Tallahassee and stopped at the St. James Hotel, and I think it was after the Chicago fire, but I don't remember.

Q. The second time was after the Chicago fire?

A. It was after the Chicago fire. I did come down in August, '79, and the other I think was—it was winter time. He left me here and went to Tallahassee to file some papers.

Q. In this suit?

A. Yes; he had nothing to do with Florida except in that suit.

Q. Do you remember whether or not on this first visit of August, '79, he filed any papers in this suit?

(Objected to.)

A. I can remember he was in Minnesota on his own private business,

and he got some letters of advice, and he had not intended to come back, and the papers he said was something absolutely necessary to be done; and we came from Duluth and stopped over in Washington to get some papers in connection with this suit, and we came on the 19th of August, 79, from Duluth. I remember because I was very ill, and it was the change of climate. He said it was absolutely necessary for him to come here to arrange about that business.

Q. You stated your husband was paralysed. When was the first shock?

A. In March, 1884

Q. From March, 1884, until May, 1891, when he died, what was his physical condition?

A. He was very feeble. In 1885 he had the third stroke of paralysis—in August, 1885, he had the third stroke from which the doctor said he never would recover, and after that months he was absolutely helpless, and most of the time we lived in hospitals—lived in five hospitals.

Q. Who looked after his business during that period?

A. I did.

55 Q. Did you have correspondence of any kind in regard to this case?

A. Messrs. Fleming and Daniel wrote to him about this business from time to time. He employed them to look after another case in connection with this claim. I always wrote his letters.

Q. You read his letters at that time?

A. Yes.

Q. Did you write his letters at that time?

A. Yes.

Q. Do you remember receiving or writing letters in regard to this case?

A. From time to time. Of course, part of the time he was so ill he could not do anything; he was sick and unconscious for a long time.

Q. Can you state whether there was any considerable number of letters that you wrote in relation to this case during that time?

By the COURT. There was nothing to impress this case any more than the ordinary business?

A. Yes; at the time of his death this was the largest case he had on the docket, and I remember a good deal for that reason.

Q. (Witness shown a letter purporting to have been written by A. Le Breton Des Chappelles.) I ask you whether or not this letter was received by your husband in due course of mail?

A. This letter I had. I brought it down.

Q. State where you got it.

A. I found it in his papers, but I am not sure I found it in his docket.

Q. Do you know the handwriting of Mr. Des Chappelles?

A. Yes.

Q. Do you remember seeing him write?

A. I have a card of his on which he wrote his own name.

Q. Did he ever visit you?

A. I don't know whether Mr. Janin made him come to Washington, but he dined with us at Washington, once.

Q. That in his handwriting?

A. Yes.

(Letter offered and filed in evidence.)

56 Q. Do you know whether that was the same Des Chapelles connected with the suit of Dalcour and others?

A. Mr. Janin had nothimg to do with him, except in a business way; he summoned him there.

Q. You spoke of his employing Fleming & Daniel in another case; do you know what that was?

A. A case of judgment against his clients. I think Mr. McCabe had a good deal to do with that case. I know Mr. Janin said, after he took this large case for Forbes, he found there was a judgment against his people for a great deal of money, and he said he would never have undertaken this case had he known it was handicapped; it would cost him too much time from this business, and he would have to reverse the judgment before he could go on with the original case. I remember his saying to Des Chapelles and Innerarity when they would write to him to go on with the case, he said he could not do any more work on the case until he got that judgment out of the way.

Q. Did you know Madam Eugenie Olivie?

A. Yes; I went to her house in the country with my husband to discuss the case with her. She took us up to New Iberia, where she had a plantation. I think she was the granddaughter of John Forbes, and she was an old lady and walked with a crutch.

Q. In what State?

A. In Louisiana. He took me up in order to see about the details of the case—look over the family papers.

Q. Is she living?

A. No, she is dead. Some of my friends wrote me she was dead.

Mr. STRIPLING. I object to the introduction of the letter upon the ground that it is not pertinent to anything before the court; does not tend to prove anything.

Mr. DEWHURST. We will have it connected later and ask to have it filed.

Cross-examination be Mr. STRIPLING:

Q. Do you know who was the attorney of record in the case about which you have been testifying?

57 A. My husband.

Q. Do you know whether or not the suit was b'ought by him?

A. Yes.

Q. Do you know whether or not his name appeared as attorney in any of the papers?

A. Yes.

Q. Did you ever see any of the papers in the case?

A. A great many of them.

Q. Was his name signed to the petition in the case?

A. Yes.

Q. Are you sure about that?

A. Yes.

Q. Did you ever see any of the papers after they were filed in the court?

A. When you file papers in court—I suppose he left them there.

Q. Did you aid or assist in the preparation of the petition in the suit about which you have been testifying?

A. I helped him a good deal. I think most of these things, important law papers—he had no clerk—and most all his papers of importance he wrote out himself and filed it. I copied a great many papers for him, and I copied lists of land and those things—townships——

Q. Do you know whether Forbes or the heirs of Forbes had other suits?

A. Yes, had several other suits; he was the lawyer for Forbes.

Q. Do you know what lands were involved in the suits about which you are testifying?

A. Land to the extent of two million and a half acres. He had a great deal of that business.

Q. Do you not know that the heirs of John Forbes claim lands under different grants from the Spanish Government?

A. I have seen on the map the Forbes purchase, and I have seen accounts in his papers.

Q. Have you any distinct recollection as to the nature of the claim of your husband's clients; that is to say, from whom they claimed to inherit?

A. They claimed to inherit from John Forbes, some from Forbes, and some from James and John Innerarity.

58 Q. Do you know this independently, now, without reference to any memorandum made at the time?

A. Yes, of course; he talked a great deal about it; he had a great many of the heirs come there to see him; often dined with him and talked of the situation of the case.

Q. Do you know when this suit was instituted?

A. I know it was instituted under the act of 1860 or '62; that is my husband's business.

Q. Do you remember the day of the year in which this suit was instituted?

A. I remember when Mr. Janin came in the suit after my marriage, between '77 & '79, when he and I came down, but it was an old suit then. He said he revised and amended the petition because he did not think it was brought in the proper way.

Q. You were married in what year?

A. '77.

Q. And your husband took charge of this case——

A. Shortly afterwards.

Q. So you don't know when the suit was instituted?

A. The original suit? It was not a new suit, a suit had been instituted before by other attorneys.

Q. Are you interested in the result of this suit?

A. I don't know. My husband had a contract in all these land cases for a large percentage.

Mr. DEWHURST. We object to the witness making any statement on the record.

By the COURT. A party has a right to know a witness' feeling in the outcome of a case, to determine whether their testimony will be influenced by their interest in the case.

By the WITNESS. My husband had a large contingent fee of quarter

of the claim. I believe some of the heirs think that interest lapsed at his death. It was a case in which he put a great deal of work, and I don't want anyone to suffer from his death but myself. I would like to get the money, of course, if I could get it, but I don't know anything about that.

Q. Where do you live now?

A. In Washington.

59 Q. Are you here in Florida specially as a witness in this case?

A. Yes; Mr. Dewhurst sent for me.

Q. Are you paying your own expenses?

A. He sent a check of $80 to come down.

By Mr. DEWHURST:

Q. I call your attention to your testimony as to whether it is correct your husband signed as attorney the original petition in the suit?

A. I told you my husband was not in the orignal suit; he was not in the original suit because it was pending many years. I supposed meant whether he signed it when he filed it in court.

Mr. DEWHURST. We offer in evidence certified copies from the records of the case of Thomas Dow et al. against Venanchie Sanchez, administrator of John Forbes in the Circuit Court of Florida, St. Johns County:

1. Withdrawal of John B. Stickney as counsel dated March 26th, 1878.

2. An affidavit of Teresa Olivier, in which she states she is one of the heirs of John Forbes and interested in the suit pending in the U. S. Circuit Court for the Northern District of Florida.

3. Affidavit of Theodore Dalcour made August, 1879, in which he states the same facts.

4. A certified copy of the order made by Judge Archibald in the suit of Theodore Dalcour et al. against Thomas Dow et al. dated Feby. 7, 1888.

(Objected to by district attorney.)

Mr. DEWHURST. I also offer in evidence 23rd Florida, in which the decree of the Supreme Court of the State of Florida is rendered, to show the date of the rendition of the decree in that suit (rendered June term, 1887) and the result of the decree, that it reversed the decree in the State court in St. Johns County and dismissed the bill.

Also offer report of the commissioners of the U. S. for the con-

60 firmation of land titles in Forida, pages 94 to 96 inclusive. Report # 2 of vol. 4 (Duff Green ed.) American State Papers.

WILLIAM MCCABE, produced as a witness on behalf of petitioner, being duly sworn, testifies as follows:

Direct examination by Mr. DEWHURST:

Q. Will you please state your residence, name, and occupation.

A. Toronto, Canada; occupation, managing director of the North American Life Ins. Co.; William McCabe.

Q. Have you any other profession or occupation besides that of general manager of the North American Life Ins. Co.?

A. I act as consulting actuary for the Commercial Travellers Association of Canada. That is the only outside business outside of my private business.

Q. Prior to your active participation in the insurance business had you any profession or occupation?

A. I was admitted to the bar of Florida, having previously graduated in law in Canada.

Q. Are you a member of the bar of any other courts?

A. Yes; of the Supreme Court, of the Circuit Court of the 2nd Judicial District, Supreme Court of the State, and of the District and Circuit Courts of the United States in this State.

Q. When did you first visit the State of Florida?

A. The latter part of 1875.

Q. What business brought you to the State of Florida?

A. I came to Florida in consequence of having received powers of attorney from my father-in-law, Thomas Dow, and others, members of the firm of Panton, Leslie & Co., and I came here for the purpose of seeing what interest they had.

Q. What did you do under those powers of attorney with reference to their interest?

A. My recollection is I visited Tallahassee first. I had letters of introduction to some of the leading citizens there, and on inquiry I heard of the pendency of this suit.

Q. What suit do you refer to?

A. The suit I am testifying in, Theodore Dalcour et al. against
61 the United States.

Q. Do you know whether that suit was pending at that time?

A. Yes; it was pending.

Q. Do you know how long it had been pending?

A. Since the 3rd of March, 1875.

Q. In what court was it pending?

A. My recollection is—although the copy of the petition I made will enable me to speak with accuracy—my recollection is it was entitled in the District Court of the State of Florida?

Q. What District Court of the State of Florida?

A. My impression is that it did not name any district. I would like you to show me the copy I made, so I can speak accurately on that point.

Q. (Witness is shown a paper purporting to be signed by Alexander Steele, atty. & counselor at law.) Is this the paper to which you refer?

A. This purports to be a copy of the petition on file, and it is entitled —addressed to the hon. judge of the District Court of the United States for the District of Florida.

By the COURT. You made a copy of that?

A. This is a copy in my own handwriting.

Q. From the original?

A. Yes.

Q. Where did you find the original?

A. In the clerk's office; Mr. Foster's office, in Tallahassee, who was then clerk of the court there.

Mr. DEWHURST:

Q. Did you copy that paper at the time you copied other papers which appear as exhibits in your testimony?

A. Yes; I copied those which I thought at the time, or was advised

by Judge Baker, who was the counsel I employed—I copied those which I thought had a bearing on the interest of those for whom I was acting, and those only.

Q. Take that paper (amended petition) and state whether you copied that at the same time you copied the others? (Paper shown witness.)

62 A. No; this paper was put in some considerable time after.

Q. What caused you to have the desire to copy papers pending in this suit of Dalcour et al. against the United States?

A. My recollection is very strong that I did it either at the request or suggestion of Judge Baker, who I had employed to represent the interest of the parties whom I represented.

Q. What were the parties you represented engaged in doing?

A. If the court will allow a little explanation. I was traveling in Europe in '75, for some months, and had letters from my father-in-law to leading gentlemen in London and other parts of Britain, who had been writing him on the interests of the old firm of Panton, Leslie & Co., in Florida, which they desired him to investigate, and he handed me those papers when I was about leaving for Europe, and requested me to call especially on a Mr. Root, who had been a leading merchant in Britain, and was then residing in London, England. Mr. Root had in his possession, if my memory serves me, a bond executed by the late John Forbes, who had been a member of the firm of Panton, Lesley & Co. This bond admitted the receipt by John Forbes as legal representative of the members of the old firm—that is William Panton, John Leslie, and Thomas Forbes, a brother of John, of $62,000 their moneys, which he had received. I recollect he gave this bond to pay us as soon as questions were decided, and it was in consequence of that bond that I began to investigate whether there was assets in Florida on which a judgment could be made.

Q. Assets of whom?

A. John Forbes. This contract was made originally as representative of the old firm.

Q. State whether you took any legal proceedings to enforce that bond?

A. I did. Under the advice of Judge Baker I made these copies I have mentioned, or at his request, to guide him in the framing of his proceedings. His opinion was that those parties could intervene in the suit then pending in the District Court of the United States for

63 Florida; the suit of Dalcour et al. agst. the United States.

Q. Was that opinion justified by the results?

A. It turned out it was not. A petition was presented to the late Judge Frazier and the judge overruled it.

Q. What did Dow & Co. do to enforce their bond?

A. It was ascertained, just how I don't recall at present, that John Forbes had a legal representative in this State, a Venachie Sanchez, who had taken out letters of administration, and suit was brought against Mr. Sanchez on the bond.

Q. What was the result of that suit?

A. A judgment in favor of the parties to whom the bond had been given, Panton, Leslie & Co., and their heirs and descendants.

Q. Did you appear on the record in that suit?

A. I was attorney.

Q. As counsel for Dow and others?
A. Yes.
Q. Where was the suit brought?
A. My recollection is it was brought in this circuit, owing to the residence of Mr. Sanchez being in the circuit.
Q. Do you know what county?
A. I think St. Johns County; I am not positive.
Q. Do you know what the ultimate result of that suit was?
A. Judgment in favor of the complainants.
Q. What was the amount of the decree—was it a money decree?
A. Yes.
Q. How much?
A. In the neighborhood of two million of dollars.
Q. What was the ultimate result?
A. The decree was reversed.
Q. Do you know when it was reversed?
A. I do by having quite recently refreshed my memory. I see it is reported in the volume to which you referred.
Q. 23rd of Florida?
A. Yes; sometime in 1887.
Q. What effect did that suit of Dow et al. against the admr. of John Forbes have on the case of Dalcour et al. against the United
64 States pending in the U. S. Court, if any?
A. I may say I watched the suit against the United States very carefully and I found no real progress was made, but I didn't know the cause until quite recently; in fact, until I heard it from Mrs. Janin.
Q. While you were engaged in the suit of Dow et al. against Sanchez, what did you purpose to do in the case of Dalcour et al. against the United States?
(Objected to. Objection sustained.)
Q. From your connection with this bond given by John Forbes, and by representing the parties claiming under that and under the decree obtained in the Circuit Court of Florida, you were interested in the progress of the suit in the U. S. Court?
A. Certainly.
Q. Did you make any such investigation of the proceedings in the U. S. Court as will enable you to state the purpose of that suit; can you state it?
A. My knowledge is based altogether on the petition filed, of which I made a copy. As I understand it, the petition sought the confirmation of the tract of land embraced——
Objected to.)
Q. This paper which you have there, you have stated in your testimony purported to be a copy. I ask you whether or not this is a copy, and whether you copied the original petition in the suit of Dalcour et al. in your own handwriting, and if that is the copy you made?
A. I copied the original petition as on file myself, and this is a copy of that petition, in my own handwriting. If I used the word "purport" it was done inadvertantly; I intended to state it was a copy as carefully as I could make it, and in all probability revised carefully, because I wanted to be accurate in giving the information to my colleague.

Q. Does that contain the whole original petition as filed in the U. S. Court, without the exhibits?

A. It it put on ordinary legal paper, and each sheet is numbered.

65 Yes; this is a copy of the petition as made by me in the latter part of '75 or early in '76, except the title of the cause and the file mark, apparently.

Q. Isn't the title of the cause and the file mark there?

A. Unless this is the file mark, sworn to on the 3rd of March, '75, by Charles H. Foster, clerk of the U. S. District Court, Nor. Dist. of Fla., by ——— Morrison, deputy clerk. My impression is very strong that the file mark and title of the cause were put on a half page, the last page being full and not leaving room for anything else. This has been carried about a great deal and apparently lost or detached.

Q. Except as to the cover of the petition, that is a true and correct copy of the petition?

A. Yes; of the original petition.

Q. In your own handwriting?

A. Yes.

Q. Will you state whether or not that has been out of your possession since the time it was made until the time it has been filed in your deposition?

A. It has not.

By the COURT. You did not make copies of the exhibits?

A. Yes; I made copies of the exhibits which Judge Baker thought important in preparing his intervention.

By Mr. DEWHURST:

Q. State the character of the papers, whether few or small or large in size?

A. I can not recall about that, except my memory was refreshed by the remarks of the clerk. I remember there being a large number in the box.

Q. Was there a book among them?

A. Yes; American State Papers, vol. 4.

Q. Are you sure that volume was there?

A. Yes; because that was the main source of my information.

Q. (Paper marked "Exhibit B" attached to his deposition handed witness.) Is that your handwriting?

A. It is in my handwriting.

66 Q. Will you state when and where you made that copy, and what it is?

A. It is a copy of the lists of lands referred to in the petition as "Exhibit B"—the petition already named—which had been sold by the United States, and within the area of the grant claimed in the original petition as certified on the 22nd of July, '75, by J. A. Lee as being a true transcript from the records of his office; that is correct, the caption U. S. Land Office, Gainesville, Florida, and signed by Mr. Lee as registrar of that office, and has also the file mark the 3rd day of March, A. D. '75, signed Charles H. Foster, clerk U. S. D. C., by C. L. Foster, D. C.

Q. Please state, barring such inaccuracies as are likely to occur in a document of that character, *it is* a true copy of the exhibit which was

attached to the original petition in the suit of Dalcour et al. against the United States, filed in the District Court of the United States?

A. Yes, it is a true copy; and I notice in turning the leaves over it was apparently rechecked and recalled, because there are certain parts corrected as if written in duplicate.

Q. Did you testify when you made that?

A. It took considerable time to copy that document and the petition, but it was done during the hours on which the court was open.

Q. I mean the year.

A. The latter part of '75 or January, '76.

Q. Exhibit B of your deposition?

A. Yes.

Q. And the former one of which you testified is "Exhibit A?"

A. Yes.

By the COURT. Where was that found?

A. In the clerk's office in Tallahassee. I could only do the copying during office hours.

Mr. DEWHURST:

Q. (Paper marked "Exhibit C," referred to in the deposition of William McCabe, handed to witness.) Is that paper in your handwriting?

A. Yes; it is all in my handwriting.

Q. Did you copy it from the original?

A. Yes.

Q. What was the original from which you copied that, and where was it?

67 A. I cannot speak positively of this, because this was copied subsequently to the other two papers. I do not observe any file mark on it to guide me, except it was presented Feb'y 11, '76. My recollection is we sought to make intervention shortly after these papers were copied.

Q. This is signed by Steele. Did he represent you or the Dow people in any way?

A. No.

Q. This intervention you had nothing to do with signed by Mr. Steele. Is that paper attached to your deposition as "Exhibit C" a true copy of the original petition filed in the suit of Dalcour et al. against the United States?

A. Yes.

Mr. DEWHURST. We offer to file these exhibits accompanying the oral testimony of the witness, if the objection made to the deposition is sustained.

Q. (Paper marked "Exhibit D," referred to in the deposition of William McCabe taken on commission, handed to witness.) Is that in your handwriting?

A. Yes.

By the COURT. What paper is it?

Mr. DEWHURST. It is entitled "A copy of the amended petition."

By the WITNESS. I was merely taking some of those copies for my own information, and it was done so as to shorten the writing as much as possible, and in the names of the parties I used the word "so forth."

Q. That only belongs to the parties descendants of Forbes?

A. There is another omission of the descendants of Forbes, and to make it convenient for the court to discriminate I gave a typewritten copy extending those abbreviations.

Q. This only applies to the heirs of Forbes?

A. Yes.

Q. Will you give the reason why you abbreviated as to the heirs of Forbes and not to the heirs of other parties?

A. I did, but not in the same way. In regard to the heirs of , I put M. in the island of C., then the word etcet'ra, including the balance named in the original petition. This is entitled

68 in the U. S. District Court, Northern District of Fla., Forbes heirs agst. the United States, endorsed amendment to petition, file mark December 14, /78, signed P. Walter, clerk.

Q. Except as to the abbreviations in the names and residences of the parties, that is a true copy of the original of the amended petition in the suit of Dalcour et al. against the United States, filed in the District Court of the United States for the Northern District of Florida?

A. Yes; on the date named.

Q. Taking this typewritten copy, which is marked "Exhibit E," referred to in the deposition of William McCabe, state whether or not the names and residences as extended on that typewriten copy are the names and residences that appear in the orginal petition filed in the suit of Dalcour et al. agst. the United States?

A. They are.

Q. (Paper marked "Exhibit F," referred to in the disposition of William McCabe, is handed the witness.) Is that in your handwriting?

A. Yes, all in my handwriting; made by myself.

Q. State when you made it and where?

A. The order is dated December 14th, '78; to the best of my recollection and belief it would be made during my yearly visit to Florida, somewhere in the month of Feb'y or March following, as it was my custom to look at the records and make inquiries as to the state of the case.

Q. (Paper marked "Exhibit G," referred to in the deposition of William McCabe, handed witness.) Is that your handwriting?

A. It is.

Q. Will you state when and where you made it?

A. It is dated—the order referred to regarding the taking of testimony of certain witnesses before A. Abet in the city of New Orleans made by Judge Settle on the 14th of December, '78, and would have been copied by me, to the best of my recollection and belief, as stated in the last case, in Feb'y or March, '79.

Q. You say that is a true copy of the original order of Judge Settle in this case?

69 A. Yes; it entitled Dalcour et al. against the United States.

Q. Can you recall whether or not a map of the lands claimed was one of the exhibits to the petition?

A. That is my recollection. I did not make a copy of that.

Q. (Witness shown a map attached to the amended petition for restoration.) Is that a copy of the map that was attached to the original petition in the suit of Dalcour et al. against the United States?

A. I could not answer that except by inference; it covers the lands and covers the description of the grant, and there was a map covering the same thing.

By the COURT. There was a map resembling that?

A. Yes.

AFTERNOON SESSION.

WILLIAM McCABE recalled.

Direct examination by Mr. DEWHURST:

Q. Please state whether the copies which you made and file here as exhibits are copies of all the papers that were on file in the case of Dalcour et al. against the United States at the time you last saw the papers.

A. They are not copies of all the papers; I did not need copies for the purpose for which I took the original papers only; I took copies of such papers as bore on the progress of the case.

Q. Were they copies of all the pleadings in the case?

A. Yes.

Q. Was there an answer of the district attorney in the case?

A. No, sir.

Q. Wouldn't that be a pleading?

A. I understand it to be so.

Q. Are those exhibits copies of all the pleadings in the case?

A. That I found on file in the case.

Q. Did you find an answer of the district attorney?

A. No.

Q. Do you know whether the district attorney had filed an answer in the case?

70 A. Never to my knowledge; on the contrary, by conversations with other attorneys in the case, Judge Cocke; I frequently spoke to Judge Cocke.

Q. Do you know whether the district attorney had appeared in the case on behalf of the United States?

A. Oh, yes.

Cross-examination by Mr. STRIPLING:

Q. How do you know the district attorney had appeared?

A. He told me so.

Q. Do you know it in any other way?

A. I know it also as an inference from his having appeared in various motions.

Q. Do you know of his having appeared in any motion that transpired in that case?

A. Only as shown by the papers put in; I was not present at the hearing.

Q. Did you ever see a paper to which his name was signed?

A. I don't understand it is usual for an attorney to sign an order.

Q. Did you see his name signed to any paper in that case?

A. I don't recall any other than the papers that I copied.

Q. Did you ever see the district attorney appear in the case at all?

A. I was never present when any action was taken in the case.

Q. You say the district attorney told you he had appeared in the case?

A. Yes.
Q. What did he tell you?
A. He told me he was representing the United States and had appeared for the Government.
Q. Did he tell you he had appeared for the Government?
A. Yes.
Q. How do you recall the circumstance?
A. The late Judge Stickney was a gentleman I met very frequently every time I visited Florida, and we were often talking of this case.
Q. You recollect of his having told you he had appeared in the case; I ask you to recall the circumstances and the time and place he said it.
71 A. I can not recall the time and place, although my impression is it was in Tallahassee.
Q. Do you remember the words Judge Stickney used when he told you he had appeared there?
A. You would not expect me to recall the exact words of something that took place 25 years ago.
Q. The remarkable thing is an attorney should tell you he had appeared in the case?
A. I don't see anything remarkable about it at all.
Q. You say you frequently met Judge Stickney and had conversations with him about the case?
A. Yes.
Q. Can you recall anything about the case?
A. I asked him if he had prepared his case—answer, and the length of time he was taking to prepare it, and said there must be something formidable about it.
Q. He never had prepared a paper?
A. No, sir.
Q. He told you he not prepared any?
A. Yes; several times.
Q. See if you can refresh your recollection and recall the particular conversation when he said he had appeared in the case.
A. I could not amplify what I have already said.
Q. Are you positive he told you he had appeared in that case?
A. Quite; absolutely so.
Q. And he used the word appeared?
A. I understand, knowing something of law, what appearance means.
Q. Can you give the court to understand any particular reason why that impressed upon your memory and other circumstances did not?
A. None other than for the reason stated—I was interested in the matter and the case.
Q. Was it a matter of any importance to you if he appeared in the case?
A. I don't know; Judge Stickney was acting in other cases in which I was concerned with Judge Baker as counsel, and therefore I had occasion to discuss matters with him; and he subsequently
72 withdrew from that case, owing to his feeling that his relations to the Government were incompatable with his duties as counsel in the Dow case.
Q. Do you know where this suit was instituted, whether at Tallahassee or Jacksonville?

A. I always understood from the papers having been filed, marked by Charles H. Foster, who was clerk of the court at Tallahassee, they were probably filed there. I don't know it outside of that circumstance.

Q. All the papers you found in the case were at Tallahassee?

A. In the first instance; in later years they were in Jacksonville.

Q. Were the papers in this case very voluminous?

A. That is my recollection of them.

Q. And you made copies of only such as you wanted for your purpose?

A. For the purpose stated after my examination before the commissioner, and in the examination to-day.

Q. Any purpose you had about it, as I understand, was to watch the progress in this case, and in the event they were successful, your judgment would be a lien on the lands?

A. I suppose so.

Q. What became of that judgment?

A. It was reversed.

Q. Never prosecuted any further?

A. No; it was not. I don't know that there was any ground for further prosecution; I suppose the decision of the Supreme Court would be final.

Q. The Supreme Court grants a new trial sometimes in a meritorious case?

A. The grounds set out in the judgment were such I personally did not see any hope for proceeding further.

Q. You have no judgment?

A. No existing judgment.

Q. Have you any interest in this proceeding?

A. I have.

Q. Please state what it is?

73 (Objected to as irrelevant as to the extent of his interest.)

By the COURT. So far as to the question of the validity of the suit it has no bearing.

Q. State what interest you have in this suit.

A. I submit, your honor, in justice to some of my clients whom I am representing under powers of attorney, and without advice of counsel, I might jeopardize those interests.

By the COURT. If you say you have a contract with some of these clients by which you have an interest as attorney, that is sufficient answer; that you are representing certain clients as attorney in the suit.

By Mr. STRIPLING:

Q. Whom do you represent?

A. I did not prepare myself to answer that question, and at my time of life my memory is not retentive; I could not give you the names with accuracy.

Q. Could you give the names of some you represent?

A. Mr. L. N. Innerarity, of Baltimore.

Q. How long have you been employed by him?

A. I don't remember the date of the power; it is not very long.

Q. Is your compensation dependent on the result of this suit?

A. It is—that is, I am doing this, having represented in the Dow case the heirs of Panton, Leslie & Forbes, the old firm, and some of them

being relatives of my own, and some in poor circumstances, and having been unsuccessful, I felt anything I could do to recover something for them would be proper. I have got a competency myself, and what the recovery would be would be a little matter compared with getting a just claim for those parties.

Q. Will you state what compensation you are to receive in the event of the successful termination of this suit?

By the COURT. That is not necessary.

By the WITNESS. My desire is not to evade any question the district attorney may ask; I wish to tell the truth, the whole truth, and nothing but the truth.

74 By the COURT. I don't think if the witness tries to excuse himself from answering the amount of interest he has, I don't think the court can compel him to testify.

Mr. STRIPLING:

Q. Is the interest large or small in the event of the termination of the suit?

By the COURT. I think the question is sufficiently answered.

(Exception noted to the ruling of the court.)

Q. How long a time were you occupied in making these copies?

A. Once I started, I kept that up as long as the clerk's office was open, until I completed it.

Q. How long a time?

A. My memory would not serve me. I could estimate by turning over a number of pages. I should say—the time the clerk's office opens, go to lunch and close early, I would only have part of a day to do it, but I kept continuously at it until I finished. I am speaking of the original petition and list of lands—several days.

Q. Why did you not apply to the clerk for copies of these papers?

A. There were two reasons: A copy by the clerk would cost a great deal of money; secondly, I had not a great deal of money to spare at that time; thirdly, the clerk could take his own time, whereas my counsel, Judge Baker, wanted to get the information so as to enable him to take such proceedings as he might think advisable; he wanted to get it as promptly as possible.

Q. Have you refused to furnish the information that is in your possession to the present counsel at any time?

A. Who do you mean by present counsel?

Q. Mr. Dewhurst.

A. Not to my recollection.

Q. You made an affidavit in this case in which you stated you had made copies of certain papers, which you would produce if called upon by the court.

(Counsel read extracts from the affidavit.)

A. That does not support your question.

75 Q. Did you ever show those papers to Mr. Dewhurst, or inform him of their contents, before your examination before the commissioner in this case?

A. I have had conversations with Mr. Dewhurst on the subject.

Q. When?

A. Some time in February or March.

Q. How long ago?

A. I fancy last year.

Q. You never showed him the originals until they were produced in this proceeding?

A. I don't recall having done so.

Q. Did he request you to show them to him?

A. I think, your honor, we differed in opinion on that subject. I did not realize what I do now, although I had some knowledge of law, I did not realize a copy of a copy would be of any use in case this copy were lost, and, therefore, feeling a deep interest in the matter, I did not care parting with the originals until they came into the custody of the court, and I think I said that to Mr. Dewhurst, if my memory serves me.

Q. The most you did was simply to inform Mr. Dewhurst you had copies of these papers?

A. I apprehend so.

Q. You did decline to give them to him, or permit him to use them until it was done under color of the process of the court?

A. I protest to the "color"; all I have done was above board.

Q. You refused to give him—to let him have these papers, or even copies of them?

A. I refused to part with the papers.

Q. Until you were questioned by the interrogatories under the process from the court?

A. If you chose to put it that way.

Q. It is a fact, isn't it?

A. It and it is not; it is explainable.

Q. Explain in what respect it is not.

A. I have already stated that several times. In the first place, I attached great importance to these papers after I learned the
76 whole record had been destroyed by the burning of the court-house here, and very incorrectly, as I now understand it, I could not preserve these copies, and anything but the copies would be useless in restoring the record, and therefore I refused to part with them.

Q. Were you instrumental in bringing about these proceedings to reestablish these records?

A. Personally I was not; I was approached on the subject by the other side—by the petitioner.

Q. Who approached you?

A. Mrs. Janin, in the first instance, if my memory serves me.

Q. Did you preserve these records with a view of restoring these proceedings?

A. No, sir; quite accidentally—they were taken in the first instance for the reason already given. That must be entirely clear to you and must be to the court. The records show for themselves; it is not a concocted case in any way.

Mr. DEWHURST. I ask your honor to give the United States ample time to prepare a case; I think they ought to have sixty days.

By the COURT. We will pass the case until Monday, the 15th of April. Further hearing postponed until Monday, the 15th day of April.

H. H. BOWEN,
Law Stenographer.

(H. H. Bowne, law stenographer, room 20, Law Exchange, Jacksonville, Fla.)

(The foregoing has the following indorsement): "District Court of United States, Southern District of Florida. Dalcour et al. vs. United States. Testimony taken. Filed Apr. 29, 1901. E. O. Locke, clerk."

77 *Answer.*

In the District Court of the United States, Southern District of Florida.

DALCOUR ET AL.
vs.
UNITED STATES.

Now comes the respondent, the United States, and for answer to the amended petition herein filed says that the said papers alleged by petitioner to have been destroyed should not be reestablished as a record of this court, for the following reasons:

1st. That the petitioner has not shown by competent evidence the substance and contents of all the proceedings and documents sought to be reestablished.

2nd. That the petitioner shows that he has omitted important parties to the alleged destroyed record.

3rd. That the petitioner has not alleged with sufficient certainty the contents or substance of the documents sought to be reestablished.

4th. That it appears from the petition that the original petitioners had ceased to prosecute the matter sought to be reestablished long prior to the alleged destruction of the alleged record.

5th. It appears from the petition that petitioner has been guilty of gross neglect and laches in delaying to file his petition until ten years after the alleged destruction of the record sought to be reestablished.

6. It appears from the petition that the petitioner is guilty of gross laches by neglecting for ten years since the alleged destruction of the documents alleged to be established, by which laches the United States is prejudiced in obtaining evidence to show that prior to the alleged destruction of said record the said proceedings had been completed.

7. That it appears from the said petition that the original petitioners in the record sought to be established were guilty of gross laches and delay in the filing of their petition and in the conduct of the pro-
78 ceedings in the record sought to be established, whereby the United States is greatly prejudiced, and is prevented by the lapse of time from obtaining evidence as to the relationship of the parties claiming to have certain rights in the alleged petition.

8. That the petitioners are greatly in laches, and should not be permitted to establish the alleged documents, for the reason that ten years have elapsed since the alleged destruction of the alleged documents, they have deprived the United States of its power of obtaining the witnesses to the rights and relationships of the petitioners, and have deprived the United States of its power to obtain evidence of what disposition was made of the original proceedings sought to reestablished prior to the destruction thereof.

9. That the petitioners should not be allowed to reestablish the said documents for the reason that this court will presume after the lapse of

the time shown by the petition that the said proceedings were finally disposed of.

10th. That the petition shows that this court has no authority to reestablish the alleged record, for the reason that if the alleged record should be reestablished and become a suit the same should then be pending in the Northern District of Florida.

11th. That the said petition involves lands lying wholly within the Northern District of Florida.

12th. That the substance of the records and files alleged to have been destroyed are not as set out by petitioners.

13th. That the petition shows such delay and laches on the part of petitioners in failing to file their petition until ten years after the destruction of the alleged records, that the United States is now unable to supply the answer filed to the documents set up in said petition as alleged to have been destroyed, which said answer this court on account of the laches on the part of the petitioners will presume to have set up a good defense to the alleged destroyed petition.

14th. That the papers attached to the petition herein filed and the amended petition, and alleged to have been filed the day of
79 1878, and which is sought to be reestablished was not filed as in said petition alleged.

15th. That the substance of a motion to dismiss, made by the United States attorney upon the filing of the original petition in the records sought to be reestablished, is not given in the papers sought to be reestablished by the petitioner, and that by reason of the long delay of petitioner in neglecting to file their petition to reestablish the United States is now made unable to ascertain the substance of the said motion to dismiss, for which reason this court will presume the same to have been well founded.

Wherefore this respondent says that the prayer of the said petition should not be granted, and that the same should be dismissed at the cost of petitioner.

J. N. STRIPLING,
United States Attorney.

(The foregoing has the following indorsement:) "#210. U. L. 2. In the United States District Court, Southern District of Florida. Dalcour et al. vs. United States. Answer. Filed this 12 day of April, 1901. E. O. Locke, clerk. By Louis Starke, deputy clerk."

80 *Demurrer.*

In the District Court of the United States for the Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES.

Comes now the petititoners by W. W. Dewhurst, their attorney, and demur to the paragraphs two to thirteen, inclusive, and to paragraph fifteen of the answer of the United States filed herein, and say that said paragraphs of said answer and each of them is bad in substance and do

not state fact sufficient to constitute any defense to their said petition for restoration of the destroyed records in the above-entitled cause.

W. W. DEWHURST,
Attorney for Petitioners.

Matters of law to be argued:

(1) The proceedings are regulated by statute, and by the terms of the statute petitioners are only required to satisfy the court that the statements contained in their petition are true.

(2) That the pendency of this suit is regulated by statute approved July 23, 1894, and the acts of Congress under which the suit was instituted.

(3) That by statute any party or person interested in the destroyed records is privileged to make application for the restoration.

W. W. DEWHURST,
Petitioners' Attorney.

I certify that I believe the foregoing demurrer to be well founded.

W. W. DEWHURST,
Petitioners' Attorney.

STATE OF FLORIDA, *Duval County:*

W. W. Dewhurst being sworn says that he is attorney for the petitioners seeking the restoration of the destroyed records in the above-entitled cause; that the foregoing demurrer is not interposed for delay.

Sworn to and subscribed before me this 15th day of April, A. D. 1901.

E. O. LOCKE, *Clerk.*

(The foregoing has the following indorsement): "#210. U. L. 2. District Court of U. S., So. Dist. of Florida. Dalcour et al. vs. United States. Demurrer to pars. 2–13 & par. 15 of answer. Filed this 15 day of Apr., 1901." E. O. Locke, clerk. By Louis Starke, deputy clerk.

81 *Joinder of issue.*

In the District Court of the United States for the Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES.

Come now the persons named in the amended petition for restoration by W. W. Dewhurst, their attorney, and join issue upon the first and fourteenth paragraphs of the answer of the United States filed herein.

Petitioners' Attorney.

(The foregoing is endorsed as follows): "District Court of U. S., So. Dist. of Florida. Dalcour et al. vs. United States. Joinder of issue on pars. 1 & 14 of answer. Filed this 15 day of Apr., 1901. E. O. Locke, clerk. By Louis Starke, deputy clerk."

* * * * * * *

85 (Copy.)

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., February 15th, 1901.

J. N. STRIPLING, Esq.,
United States Attorney, Jacksonville.

SIR: The Attorney-General has transmitted to me copy of your letter to me of the 7th inst., in which you ask for information as to the status of a suit instituted in the Northern District of Florida on March 3rd, 1875, to secure the confirmation of certain lands granted to John Forbes and Company in 1818 by Spain.

The Attorney-General states that the records in his Office do not show the presence of any papers relating to the suit, and he therefore asks that such data as may be obtainable from the records of this Office may be sent to you.

The following information is obtained from the annual and term reports of the U. S. attorney for the Northern District of Florida, on file in this Office.

In his annual report for the year ending June 30th, 1876, there is reported the institution of a suit against the U. S., date not given, the form and cause of action being:

"Petition for land floats, etc."

In the column of remarks is the following:

"Suit to recover about 2,000,000 acres of land in west Florida or floats for same, by heirs of John Forbes—continued.—Motion to dismiss petition filed by U. S."

In term report for December, 1876, the suit is stated to have been commenced in March, 1875. In column of remarks is the following:

"Heirs of John Forbes. Suit to recover from the U. S. about 2,000,000 acres of land in west Florida or floats for same—suit commenced 1875 by petition under the law of 1860. U. S. attorney filed motion to dismiss the petition. On motion of plaintiff's solicitor the case was transferred from Tallahasse to Jacksonville and suit continued until next term."

86 In special May term, 1877, report the case was reported as "Pending," and in the column of remarks is the following:

"Suit to recover 2,000,000 acres of land in west Florida or floats for same by heirs of John Forbes. Motion made by U. S. attorney to dismiss suit at February term, 1876. On motion of plaintiff's attorneys the case was transferred to Jacksonville. In the annual report for the year ending January 30th, 1877, the case was reported without comment."

In December, 1877, term report is the following:

"Suit by heirs of John Forbes under act of 1860."

The annual report for the year ending June 30th, 1878, gives date of commencem'nt of suit as March 3rd, 1875. No action in the case is reported.

In December, 1878, term report the case is styled:

"Petition for confirmation of land grant and for floats (Spanish grant)." Remarks, "Suit by heirs of John Forbes and others under act of 1860, to confirm about 1,500,000 acres of land in west Florida, continued."

In annual report for the year ending 1879 the suit is reported, but no action thereon is indicated.

In December, 1879, term report the case is reported "continued."

In annual report for year ending June 30th, 1880, the case is reported, but no action indicated.

In December, 1880, term report, the case is reported as "continued."

In annual report for year ending June 30th, 1881, the case is reported, but no action indicated.

In December, 1881, term report the case is reported as "continued."

In the annual report for year ending June 30th, 1882, the case is reported, but no action indicated.

In December, 1884, term report the case is referred to as "continued."

In the annual report for 1890–1891 there is no mention of the case, but the following note is appended to the report:

87 "This report does not contain any case appended or disposed of in the U. S. courts at Jacksonville, Florida, as the records of said courts and all of its officers were totally destroyed by fire May 18, 1891, and is otherwise defective because the necessary data from which to make a report was destroyed in said fire."

No mention is made of the Forbes case in the reports examined during several subsequent years.

The act of 1860 referred to is supposed to be the act of June 22nd, 1860. (12 Stats. L. P., 85.)

I have sent to the Commissioner of the General Land Office copies of your letter, the letter of the Attorney-General and this letter with a request that he will communicate to me for transmission to you, or to you direct, any information that he may be able to give respecting the subject of your inquiry.

Any information received by me from him will be at once transmitted to you.

Very respectfully,

(Sd.) M. D. O'CONNELL, *Solr.*

(The foregoing affidavit and copy of letter are under one cover, which is indorsed as follows: "# 210 U. L., 2. District Court of the U. S., Southern Dist. of Florida. Dalcour et al. vs. United States. Affidavit in support of motion. Filed this 15 day of April, 1901. E. O. Locke, clerk. By Louis Starke, deputy clerk."

* * * * * * *

88 (Extract from the minutes of the District Court of the United States in and for the Southern District of Florida, dated Wednesday, May 8th, 1901, as the same appears on page 339 of Minute Book designated "New Series C.")

Adg'd term U. S. District Court, So. District of Florida, May 8, 1901.

Present: Honorable James W. Locke, judge, the officers, crier, and bailiffs in attendance.

Ordered: That court be opened. Whereupon court is opened by due proclamation.

* * * * * * *

Order reciting substance and effect of destroyed records, &c.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES OF AMERICA.

This cause coming on to be heard upon the petition and amended petition for the restoration of the record, in the above-entitled suit alleged to have been destroyed by the burning of the United States cou[illegible] at Jacksonville, Florida, on the 19th day of May, A. D. 1891, [illegible] mony having been submitted and considered by the court, the co[illegible] advised in the premises, doth therein find, order, and decree:

1. That a suit by way of petition wherein Theodore Dalcour and others as heirs of John Forbes were petitioners, and the United States of America were defendants, was instituted in the District Court of the United States for the Northern District of Florida, on the 3rd day of March, A. D. 1875, under the eleventh section of the act of Congress approved June 22nd, A. D. 1860, and the act of Congress approved June 10th, 1878, extending the same for the confirmation of two tracts of land within the State of Florida.

2. That the copy of the original petition filed in the suit on the 3rd day of March, A. D. 1875, marked "Exhibit A," in the testimony of William McCabe, and filed herein is a true copy of said petition, and is hereby restored, and it shall have all the force and effect of the said original petition filed in said suit on the third day of March, A. D. 1875.

3. That thereafter an order allowing said original petition in said suit to be amended was made in said cause by the Honorable Thomas Settle, judge of said court, on the 14th day of December, A. D. 1878, a
89 copy of which order is marked "Exhibit F," and is so attached to the testimony of the said William McCabe, and the same is hereby restored and established, and it shall have the full force and effect of the said original order.

4. That on the 14th day of December, A. D. 1878, the original petition filed in said cause was amended, a copy of which amended petition as attached to the testimony of the said William McCabe, and marked "Exhibit E," and it is hereby restored, and it shall have all the force and effect of the said original amended petition.

5. That on the 16th day of December, A. D. 1878, an order was made in said suit for the taking of testimony therein, a copy of which order is attached to the testimony of the said William McCabe, and marked "Exhibit G," and it is hereby restored, and it shall have all the force and effect of the said original order made by the Hon. Thomas Settle, judge of said court.

6. That on the 11th day February, A. D. 1876, a petition for intervention in said suit was presented to the said court and denied, a copy of which petition is attached to the testimony of the said William McCabe, and marked "Exhibit C," which petition is hereby restored, and it shall have the same force and effect as the original thereof.

7. That with said original petition filed March 3rd, A. D. 1875, was filed a map, designating, according to the United States public surveys, the lands claimed in said petition to have been granted to John Forbes

and Company on the 10th day of January, A. D. 1818, and also that part of Vol. IV of Duff Green's edition of the American State Papers refering to public lands, being report No. 2, beginning on page 94 and ending with the first column of page 96 thereof; and also a list of lands within the area of the said claimed grant specially described in the act of possession thereof, given by Governor Masot, as set out in the lower half of column 2, on page 96, of said Vol. IV, American State Papers, Public Lands, which lands in said list had been disposed of by the United States prior to the filing of said petition, as certified by J. A. Lee, register of the United States land office at Gainesville, Florida, which

90 said report No. 2 is in said Vol. No. IV, American State Papers, Public Lands, as given on pages 94–7 thereof, and said lists of lands as compiled and certified to by said J. A. Lee, register, as aforesaid, were also attached to, filed with, and made a part of said original petition filed March 3rd, A. D. 1875.

8. That said suit was pending undetermined in the District Court of the United States for the Northern District of Florida, on the 23rd day of July, A. D. 1894, and by an act of Congress entitled "An act to change the boundaries of the judicial districts of the State of Florida," approved July 23rd, A. D. 1894, was transferred into the District Court of the United States for the Southern District of Florida, and is now pending therein.

9. That by the fire that burned the United States court-house at Jacksonville, Florida, on the 19th day of May, A. D. 1891, all the records and files of said suit were burned and destroyed.

10. That the exhibits attached to the testimony of William McCabe taken on commission in the proceedings for the restoration of the records in said cause, which are marked "Exhibit A," "Exhibit B," "Exhibit C," "Exhibit E," "Exhibit F," and "Exhibit G," and filed herein, are respectively proved to the court to be copies of the original papers in said suit; and this court, by virtue of the power conferred thereon by the statute in such case made and provided, doth order and decree that the substance and effect of said destroyed records in said above-entitled suit was and is set forth in the amended petition for the restoration of said records, and doth reestablish as the records in said suit the following documents, and doth adjudge the substance and effect of said burned records to be of the same tenor therewith, and doth make the same a part of this order as if herein fully set out, namely:

A. The copy of said original petition filed in evidence and marked "Exhibit A," as the original petition in said above-entitled suit.

B. The copy of the order of Judge Settle, made December 14th, A. D. 1878, allowing amendments of said original petition, filed in evidence and marked "Exhibit F," as the original order made thereon December 14th, A. D. 1878.

C. The copy of said amended petition made and filed December

91 14th, A. D. 1878, which copy is filed in evidence and marked "Exhibit E," as the amended petition in said suit.

D. The copy of the order for the issuance of a commission to take testimony de bene esse dated December 16th, A. D. 1878, filed in evidence and marked "Exhibit G," as the original order to take testimony de bene esse in said suit.

E. The copy of the list of lands within the limit of the grant of land sought to be confirmed but disposed of by the United States prior to March 5th, A. D. 1875, filed and marked "Exhibit B," as the original of the list of lands (so disposed of by the United States) filed in said suit.

F. The copy of a petition for intervention filed in said suit and denied, filed in evidence and marked "Exhibit C," as the original petition for intervention with the denial thereof, as the original of the same and said denial and the court doth order and decree that said copies reestablished shall stand in place of and have the same force and effect as the originals of the said respective documents, files, and records had or might have had if the same had never been destroyed.

Done and ordered in open court this 8th day of May, A. D. 1901, and the same directed to be entered of record in the minutes of said District Court.

JAMES W. LOCKE, *Judge.*

To which order the United States, by its attorney, J. N. Stripling, esq., excepts.

Ordered: That court adjourned one day, at which time the officers, criers, and bailiffs shall attend.

And court is adjourned as ordered.

Attest: E. O. LOCKE, *Clerk.*

(Above decree is also filed endorsed as follows:) "No. 210 U. S. 2 District Court of United States Southern District of Florida. Dalcour et al. *v.* United States. Order reciting substance and effect of destroyed records and reestablishing the same. Filed this 8 day of May, 1901. E. O. Locke, clerk. By Louis Starke, deputy clerk. Ent'd in Dist. Ct. Minutes, p. 339. Entered in D. C. order book, p. 136."

92 *Bill of revivor.*

In the District Court of the United States for the Southern District of Florida.

To the Honorable JAMES W. LOCKE,
Judge of the District Court of the United States
for the Southern District of Floida:

Theodore Dalcour, of the province of Matanzas, in the island of Cuba; Gustave Dalcour and Clavatta Dalcour, wife of John Cowden, of Ellicott Mills, State of Maryland; Eugene Dalcour, of Baltimore, State of Maryland; Frank Dalcour, of Dallas, State of Texas; Clementine Dalcour, of Philadelphia, State of Pennsylvania; Antoinette Dalcour, wife of Edward Dyer, of San Antonio, State of Texas, and said Edward Dyer, and John Cowden of said Ellicott Mills; Francoise Bellechase, of Biaritz, Republic of France; John B. Olivier, Louisa M. Olivier, wife of P. S. Winchester, and said P. S. Winchester, of Iberia Parish, State of Louisiana; Stephen Tennant, Hennrietta Tennant, Leocadie Tennant, wife of A. J. Morrison, and said A. J. Morrison, of London, Kingdon of Great Britain, Blanche Bruce and Robert Bruce, her husband, of Liverpool, said Kingdon of Great Britain; Edmond de Gonser, of Elpaso, State of Texas; Joseph de Gonser and Mary de Gonser, incapable person, by Joseph de Gonser,

her next friend and guardian, of Camajuani, in the Republic of Cuba; Julia G. de Gonser, wife of J. G. del Sallo, and said del Sallo, her husband, of Jerez de la Frontera, Kingdom of Spain; Louisa de Gonser, wife of Louis, the Count of Bescuccia, and the said Louis, Count de Bescuccia, of Paris, Republic of France; Henry de Gonser, and Antoinette de Gonser, of said Paris; Jules Fontena, of Bayonne, Republic of France; John Gillispie Innerarity, of Brooklyn, State of New York; Helen V. Drucos, of Pass Christian, State of Mississippi, and Marcal T. Drucos, her husband, Louis M. Innerarity, of Baltimore, State of Maryland; Emanuel H. Innerarity, of Dallas, State of Texas; Margaret Hiern and Charles H. Hiern, her husband, James J. Innerarity, Fanny Wycoff, and Cornelius Wycoff, her husband, of New Orleans, State of Louisiana; Eloise Wilson and John Wilson, her husband, of Houston, State of Texas; Albert H. W. Innerarity, of Pass Christian, State of Mississippi; Eliza Z. Boggs and R. N. Boggs, her husband, of Long Beach, State of Mississippi; Heloize or Eliza Minor, of Norfolk, State of Virginia; Vincent Innerarity, of Madrid, Kingdom of Spain; Harriette
93 Deschappelles and E. Le Breton Deschappelles, her husband; Eliza M. Barton, Cecile V. Wilson, William H. Wilson, James Wilson, Corine A. Wilson, all of New Orleans, State of Louisiana; Harriett A. Wilson, of Emmitsburg, State of Maryland; John Wilson, of Houston, State of Texas; Heloise Cruzat and William Cruzat, her husband, of New Orleans, State of Louisiana; Eugene Hulse and Melanie Hulse, of Denison, State of Texas; Sidney Hulse, of San Francisco, State of California, Sarah H. Hulse, Mary V. Hulse, and John Hulse, of New Orleans, State of Louisiana; and Emma H. Taylor, of Pensacola, State of Florida, bring this their bill of revivor and supplement against the United States of America, and thereupon your orators complain and say:

(1) That on or about the 3rd day of March, A. D. 1875, Theodore Dalcour, of Matanzas, Cuba, Augustus Dalcour, of Ellicott Mills, State of Maryland, Sophia Sanchez and Theodore Sanchez, of Salvador, Cuba; Theresa Olivier and Eugene B. Olivier, of Lafayette Parish, State of Louisiana; Stephen Tennant, Leocadie Tennant, and Henrietta Tennant, of Lancashire, England; Blanche Bruce and Robert Bruce, of Scotland, Jules Fontena, of Bayonne, France, Edmund Depestre, Louisa Depestre, of the island of Cuba; Julie de Gonser and Jose de Gonser filed their duly verified petition under and conforming to the act of Congress approved June 22nd, 1860, entitled "An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes," and its extensions, in the District Court of the United States for the Northern District of Florida, in the Middle Division, at Tallahassee, against the United States of America, alleging in substance;

(2) That on January 10th, 1818, the Government of Spain made a grant of land in the Territory of Florida, now the State of Florida, to John Forbes, containing 1,800,000 acres, more or less, the survey of which, as alleged, begins opposite the mouth of Sweet Water Creek on the Apalachicola River, and embraces all the lands between the Apalachicola and Choctawhatchee rivers south of the point of beginning to the Gulf of Mexico, and said grant was in said bill set forth and described at length and in the terms of the original grant, and was also set out by the town-

ships and ranges of the public surveys made by the United States of the lands embraced in said grant, since the "change of flags," and there was attached to said bill or petition a map of said grant delineating
94 said lands claimed by petitioners.

(3) Said petitioners further set forth with unnecessary particularity the facts connected with the making and confirming of said grant by the lawful authorities of the Government of Spain prior to January 10th, 1818.

(4) Said petition further alleged the petitioners to be the heirs and all the heirs at law of John Forbes, alleged to be the grantee in said grant of land.

(5) Said petition also set out that at the date of its filing the United States had sold, or otherwise disposed of, 904,462 and 46–100 acres of a total 1,375,637 and 32–100 acres of said grant as surveyed by the United States, leaving at the date aforesaid 471,174 and 86–100 acres of surveyed land and lands under the Bay of St. Andrews, alleged to be the lands of the petitioners; and said petitioners attached to their said petition certified statements in proof the their allegations, made by the register of the United States land office in Florida.

(6) Said petition also referred to and annexed the report of the commissioners for ascertaining land claims and titles to land in the Territory Florida, which is printed as report No. 2 in volume 4, pages 94 to 96 of the American State Papers (Duff Green's edition).

(7) Said petition also set out the history of another grant of land made to John Forbes for 10,000 acres at the head of the Little St. Marys River in the Territory of East Florida.

(8) Said petition prayed citation to the United States of America and its service upon the district attorney of the United States for the Northern District of Florida that said court decide said claims valid and so decree according to the principles established by the said act of Congress approved June 22nd, 1860.

(9) That thereafter the United States of America were duly served with citation therein and appeared in said cause by John B. Stickney, United States attorney for the Northern District of Florida, and filed therein its motion to dismiss said petition upon the grounds set out in said motion as filed.

(10) That thereafter said cause was by order made therein transferred into the Eastern Division of said District Court on, to wit, the 14th day of December, A. D. 1878, said petitioners obtained an order
95 therein giving them leave and by authority of such leave of court, filed therein their amended petition, alleging that said grant of land was made to John Forbes and Company; that by mistake the original petition averred that the grant was made to John Forbes; that John Innerarity and James Innerarity were partners of John Forbes and grantees with John Forbes of said tract of land.

(11) Said amended petition added as petitioner the heirs of John Innerarity and James Innerarity, and named them as follows:

Fanny W. J. Innerarity, tutrix of Helen V. and Louis Minor Innerarity; Emanuel S. Innerarity; Margaret Innerarity; James I. Innerarity, all of the city of New Orleans, Louisiana; Fanny C. Innerarity, wife of Cornelius P. Wikoff, and said Cornelius P. Wikoff, her husband; Eloise

Innerarity, wife of John Wilson, and the said John Wilson, her husband, also of New Orleans, Louisiana; Albert H. W. Innerarity, of Scott Station, Mississippi; Eliza Z. Innerarity, wife of R. N. Boggs, residing near Pass Christain, Mississippi; and said Boggs as her agent; Eliza Innerarity, widow of Louis Minor, residing in the city of Norfolk, Virginia; James or Santiago Innerarity, residing at Haidaye, France; Harriet F. Innerarity, wife E. Le Breton Deschappelles and the said Deschappelles as her husband; Eliza Melanie Innerarity, wife of John S. Barton and the said Barton as her husband, residing in New Orleans, Louisiana, being the descendants and heirs at law of James Innerarity, deceased; and Victorie Innerarity, widow of W. P. Innerarity, Henrietta Innerarity, widow of Henry Wilson, both of New Orleans, Louisiana; Albert Hulse, residing at Bay St. Louis, Mississippi; Sarah Hulse, tutrix of her minor children, John and Victorie Hulse, residing at Milton, Florida; and Emma Hulse, wife of L. B. Taylor, residing at Pensacola, Florida, descendants and heirs at law of John Innerarity.

(12) Said amended petition dismissed all claims to the grant for 10,000 acres on the Little St. Marys River, and alleged that the heirs of John Forbes were entitled to one-third of the grant between the Apalachicola and Choctawhachee rivers with a like share respectively in the heirs of John and James Innerarity, and prayed the court to decree their claim valid, according to the principles of said act of Congress approved June 22nd, 1860.

96 (13) That thereafter and before any further proceedings were had in said cause (except an order therein for the issuance of a commission to take testimony of certain witnesses de bene esse) on to wit, the 19th day of May, A. D. 1891, the court-house at Jacksonville, Florida, was burned and all the original records and files in said suit were wholly destroyed, save only the motion of the defendant, by its district attorney, made in said cause.

(14) That thereafter, by act of Congress approved July 23rd, 1894, all cases pending in the District Court for the Northern District of Florida, at Jacksonville, Florida, and all records of said court at Jacksonville, aforesaid, were transferred into the District Court for the Southern District of Florida, to be prosecuted therein as if originally instituted in said court; that this suit was on said July 24th, 1894, pending in said District Court for the Northern District of Florida, at Jacksonville, and was by said act of Congrese transferred into the District Court for the Southern District of Florida.

(15) That thereafter certain of petitioners and the heirs and legal representatives of certain of petitioners, on behalf of themselves and all others parties to the original and amended petition, took action under the statute made and provided for the restoration of destroyed records of courts of the United States, and on the 8th day of May, A. D. 1901, by an order of this honorable court, the original files of said suit were restored.

(16) That during the pendency of this suit of the petitioners Leocadie Tennant has intermarried with your orator, A. J. Morrison; that of the other original petitioners there have died the following persons:

August Dalcour, leaving your orators, Gustave Dalcour, Ellicott Mills, State of Maryland; Eugene Dalcour, of Baltimore, State of Maryland;

Frank Dalcour, of Dallas, State of Texas; Clementine Dalcour, of Philadelphia, State of Pennsylvania; Clavatta Dalcour, wife of John Cowden, of said Ellicott Mills; Antoinette Dalcour, wife of Edward Dyer, of San Antonio, Texas; his only heirs at law.

Sophia Sanchez and Theodore Sanchez, leaving your orator, Francoise Bellechasse, the only heir at law of his mother, said Sophia Sanchez.

Theresa Olivier and Eugene B. Olivier, leaving your orators
97 John B. Olivier and Louisa M. Olivier, wife of P. S. Winchester, of the parish of Iberia, State of Louisiana, the only heirs at law of said Theresa Olivier, who survived her husband.

Edmond Depestre, Louise Depestre, and Jule de Gonser and her husband, Jose de Gonser, leaving your orators, Joseph de Gonser, Edmond de Gonser, Mary de Gonser; Julie G. de Gonser, wife of J. G. del Sallo; Louisa de Gonser, wife of Louis, the Count de Bescucia; Henry de Gonser and Antoinette de Gonser, children of said Julie de Gonser, the only heirs at law of said Julie de Gonser, Louisa Depestre, and Edmond Depestre.

James Innerarity, leaving your orator, Vincent Innerarity, his son and only heir at law.

Victorie Innerarity, leaving your orators, Henrietta Deschappelles and Eliza M. Barton, her children, her only heirs at law.

Henrietta Innerarity, leaving your orators, Cecile V. Wilson, William H. Wilson, James Wilson, Harriet A. Wilson, Corinne A. Wilson, and John Wilson, her children, her only heirs at law.

Albert P. Hulse, leaving your orators, Heloise Cruzat, Eugene Hulse, Melanie Hulse, and Sidney Hulse, his children, his only heirs at law.

Sarah Hulse, leaving your orators, Mary Victorie Hulse and John Hulse, her children, her only heirs at law.

(17) That the right and title of said above-named deceased persons in and to the land sought to be confirmed in and by said original and amended petition is vested by the laws of descent in the persons above named as their respective heirs at law.

That there has also died since the institution of said suit L. B. Taylor, the husband of your oratrix, Emma Hulse Taylor.

(18) That by the death of the said several petitioners said suit abated as to such petitioners, but your orators are advised that the persons alive and still before the court of said original petitioners are entitled to maintain the suit and are competent to call upon the court for its decree, deciding the claim of John Forbes and Company to be a valid grant, and that such power is conferred under and by virtue of said act of Congress, approved June 22nd, 1860, and that your orators are entitled to have either an order of this honorable court determining that the survivors of said petitioners in said original petition as amended can
98 maintain this suit without an order of revivor, and authorizing such survivors as surviving petitioners to prosecute this suit to a decree, or else your orators are entitled to have said suit revived against the United States of America and restored to the same condition as it was in previous to the death of the above named of said petitioners who have died since its institution.

To the end, therefore, that the said suit and proceedings may be directed to be prosecuted to a final decree by the surviving petitioners if

this court shall hold such survivors competent to call for its decree, or, otherwise, that the same be revived against the United States of America and be in the same condition as said suit was in on and at the time of the abatement thereof by the death of those of the petitioners in the original petition as amended who are herein shown to have died pending proceedings therein, or that the United States of America may show good cause to the contrary, and may full, true, direct, and perfect answer make to the several matters set forth in the said original petition as amended, as well as the matters set forth in this bill of revivor.

For as much as the United States of America have consented by act of Congress to be sued herein and directed its attorney to defend the same, your orators pray it may please your honor to grant to your orators and oratrixes a writ of subpœna to revive and answer, directed to the United States of America, commanding at a day certain that the United States of America, by its district attorney for the Southern District of Florida, Joseph N. Stripling, esq., be and appear before your honorable court, then and there to answer and show cause, if it can, why said suit and the proceedings therein should not be prosecuted to final decree by the survivors of the petitioners against the United States of America, and be in the same plight and condition as the same was at the time of the abatement thereof, if the same be held to have abated; and further stand to and abide such order and decree in the premises as to your honor shall seem meet.

And your orators and oratrixes will ever pray, etc.

W. W. DEWHURST,
Counsel and Solicitor for Petitioners or Complainants.

99 (The foregoing is endorsed as follows:) "#210. P. 224. L. I. District Court of the U. S. for Southern District of Fla. Dalcour et al. vs. United States of America. Bill of revivor. Filed Oct. 18, 1901."

* * * * * * *

102 *Demurrer to bill of revivor.*

In the United States District Court, Southern District of Florida.

THEODORE DALCOUR ET AL.)
vs.
UNITED STATES OF AMERICA.)

The defendant, saving and reserving unto itself any and all manner of advantage of exception to the want of jurisdiction of this court to entertain the bill of revivor herein, and not confessing or admitting all or any of the allegations of the said bill of revivor, does demur thereto and for grounds of demurrer shows:

First. That said bill of revivor does not set forth any facts sufficient to entitle the complainants therein to the relief prayed, or to any relief in this court.

Second. That said bill does not pray for revivor alone, but does pray for other and different relief.

Third. The allegations of said bill as to the decease of certain parties therein mentioned are vague, indefinite, and uncertain, and do not set forth the date or dates of the decease of said parties.

Fourth. The said bill does not allege whether or not the persons whose decease is therein set forth died intestate.

Fifth. The said bill does not set forth the relationship of the parties seeking to revive, to the parties alleged to be deceased.

Sixth. The said bill does not set forth any title in the parties seeking to revive said suit.

Seventh. The said bill does not show sufficient interest in these parties seeking to revive the said suit to maintain said bill.

Eighth. The said bill does not show sufficient privity in the parties seeking to revive said suit to maintain said bill.

Ninth. The right to maintain the said bill is barred by the statute of limitations.

103 And for divers other good grounds of demurrer apparent upon the face of said bill.

J. N. STRIPLING,
U. S. Attorney.

I hereby certify that in my opinion the foregoing demurrer is well founded in law.

J. N. STRIPLING,
U. S. Attorney.

STATE OF FLORIDA, *County of Duval.*

Before me personally came J. N. Stripling, who, being duly sworn, says that he is the attorney for the defendant in the foregoing cause; that the foregoing demurrer is interposed in good faith and not for the purpose of delay.

J. N. STRIPLING.

Sworn to and subscribed before me this December 2nd, 1901.

E. O. LOCKE, *Clerk.*

(The foregoing has the following indorsement:) "#210. Page 224. L. I. In U. S. District Court, Southern District of Florida. Theodore Dalcour et al. vs. United States of America. Demurrer. Filed Dec. 2, 1901. E. O. Locke, clerk. *U. S. Attorney.*"

104 *Order that survivors prosecute in behalf of all interested.*

In the District Court of the United States for the Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES OF AMERICA.

In the matter of the petition filed October 18th, A. D. 1901, by Theodore Dalcour, Stephen Tennant, Henrietta Tennant, Blanche Bruce, Robert Bruce, Jules Fontena, Leocadie Morrison, formerly Leocadie Tennant, who are alleged in said petition to be the survivors of the persons who filed the original petition herein on the 3rd day of March, A. D.

1875, and Helen V. Drucos, formerly Helen V. Innerarity, Louis M. Innerarity, Emanuel Innerarity, Margaret Hiern, formerly Margaret Innerarity, James I. Innerarity, Fanny Wycoff, and her husband Cornelius Wycoff, Eloisa Wilson, and her husband John Wilson, Albert H. W. Innerarity, Eliza Z. Boggs, formerly Eliza Z. Innerarity, and her husband R. N. Boggs, Eliza Minor, Harriette Deschapelles, and her husband B. Le Breton Deschapelles, Eliza M. Barton, formerly Eliza Melanie Innerarity, John Hulse, Victoria Hulse, and Emma Taylor, formerly Emma Hulse, who are alleged in the petition to be the survivors of the persons added to this cause by amendment the 14th day of December, A. D. 1878, and divers other persons who are alleged in said petition to be the successors in title to the parties to the said original and amended petitions, who have died between the filing of the said original and amended petitions, and of the said petition filed the 18th day of October, A. D. 1901.

This cause coming on to be heard on demurrer to the petition filed as aforesaid, to-wit, on the 18th day of October, A. D. 1901, and the same having been argued by counsel for the petitioners and for the respondent, United States, and the court having considered the same, and being advised in the premises.

105 It is hereby ordered, adjudged, and decreed that the said demurrer be, and is hereby, overruled so far as is hereinafter provided.

And it appearing to the court by the said petition that the survivors of the parties to the said original and amended petitions have, in and by their said petition, filed as aforesaid October 18th, A. D. 1901, prayed that they may be permitted to prosecute the further conduct of this case in their own names and for the common benefit of themselves and of all other persons lawfully claiming title to any part of or interest in the land in controversy under John Forbes, John Innerarity, or James Innerarity, and it appearing to the court that the proper and expeditious determination of the cause requires the granting of the said prayer;

Now, therefore, it is further ordered, adjudged, and decreed that the further prosecution of this cause shall be by and in the name of Theodore Dalcour, Stephen Tennant, Henrietta Tennant, Blanche Bruce, and her husband Robert Bruce, Jules Fontena, Leocadie Morrison, formerly Leocadie Tennant, and Helen V. Drucos, formerly Helen V. Innerarity, and her husband Marcal T. Drucos Louis M. Innerarity, Emanuel Innerarity, Margaret Hiern, formerly Margaret Innerarity, and Charles H. Hiern, her husband, James I. Innerarity, Fanny Wycoff, and her husband Cornelius Wycoff, Eloisa Wilson, and her husband John Wilson, Albert H. W. Innerarity, Eliza Z. Boggs, formerly Eliza Z. Innerarity, and her husband R. N. Boggs, Eliza Minor, Harriette Deschapelles, and her husband E. Le Breton Deschapelles, Eliza M. Barton, formerly Eliza Melanie Innerarity, John Hulse, Victoire Hulse, and Emma Taylor, formerly Emma Hulse, survivors of the petitioners in the original and amended petitions, for the benefit of themselves and those lawfully claiming the said tract of land or any part thereof, or interest therein under them, and of all other persons lawfully claiming the said tract of *of* land or any part thereof or interest therein, under the said John Forbes, John Innerarity, or James Innerarity, and the final decree to be rendered in this suit, if

for the complainants, shall provide that the complainants or petitioners in the original and amended petitions, and those claiming
106 under them shall share in the benefits of said decree according to their respective rights and interests; and if for the United States, shall bar the original complainants or petitioners and all persons claiming by, through, or under them or any of them.

It is further ordered that if any one or more of the said persons in whose names this cause is ordered to be further prosecuted shall be deceased or die before the final termination of the cause, it shall proceed in the names of the survivors or survivor of the said named persons, so long as one thereof shall survive.

It is further ordered that if any person lawfully claiming said tract of land or any part thereof, or any interest therein, shall desire to intervent for the protection of his interest he shall, upon petition and proof of his said interest, be admitted into the suit as a petitioning party against the respondent.

It is further ordered that the respondent be given sixty days in which to take such further action as it may be advised.

All question of costs is hereby, as between the parties petitioning and those represented by them, reserved until further order.

And it is further ordered that it shall not be considered that the question of laches of the petitioners or the running of the statute of limitations has been passed upon or determined herein in overruling said demurrers, but that said question may be considered and passed upon, upon further hearing, the same as if this order had not been entered.

Done in open court this 5th day of July, 1902, Jacksonville, Florida.

JAMES W. LOCKE, *Judge.*

(The foregoing is indorsed as follows:) "#210, pg. 224, L. 1. District Court of U. S. So. Dist. of Florida. Dalcour et al. vs. United States. Order that survivors prosecute in behalf of all interested. Filed Jul. 5, 1902. E. O. Locke, clerk. Ent. in Dist. Ct. Minutes, p. 495."

107 *Plea.*

In the District Court of the United States, Southern District of Florida.

The plea of the United States of America to the bill of complaint of Theodore Dalcour, of the province of Matanzas, in the island of Cuba; Gustave Dalcour and Clavatta Dalcour, wife of John Cowden, of Ellicott Mills, State of Maryland; Eugene Dalcour, of Baltimore, State of Maryland; Frank Dalcour, of Dallas, State of Texas; Clementine Dalcour, of Philadelphia, State of Pennsylvania; Antoinette Dalcour, wife of Edward Dyer, of San Antonia, State of Texas; and said Edward Dwyer and said John Cowden, of said Ellicott Mills; Francoise Bellechase, of Biaritz, Republic of France; John B. Oliver, Louisa M. Oliver, wife of P. S. Winchester, and said P. S. Winchester, of Iberia Parish, State of Louisiana; Stephen Tennant, Henrietta Tennant, Leocadie Tennant wife of A. J. Morrison, and said A. J. Morrison, of London, Kingdom of Great Britain; Blanche Bruce and Robert Bruce, her husband, of Liverpool, said Kingdom of Great Britain; Edmund de Gonser, of El Paso, State

of Texas; Joseph de Gonser and Mary de Gonser, *in* incapable person, by Joseph de Gonser, her next friend and guardian, of Camajuani, in the Republic of Cuba; Julia de Gonser, wife of J. G. del Sallo, and said del Sallo, her husband, of Jarez de la Frontera, Kingdom of Spain; Louisa de Gonser, wife of Louis, the Count de Bescuccia, and said Louis, Count de Bescuccia, of Paris, Republic of France; Henry de Gonser and Antoinette de Gonser, of said Paris; Jules Fontena, of Bayonne, Republic of France; John Gillespie Innerarity, of Brooklyn, State of New York; Helen V. Drucos, of Pass Christian, State of Mississippi; and Marcal T. Drucos, her husband, Louis M. Innerarity, of Baltimore, State of Maryland; Emanuel H. Innerarity, of Dallas, State of Texas;
108 Margaret Hiern and Charles H. Hiern, her husband, James J. Innerarity, Fanny Wycoff and Cornelius Wycoff, her husband, of New Orleans, State of Louisian*na*; Eloisa Wilson and John Wilson, her husband, of Houston, State of Texas; Albert H. W. Innerarity, of Pass Christian, State of Mississippi; Eliza Z. Boggs and R. N. Boggs, her husband, of Long Beach, State of Mississippi; Heloise or Eliza Minor, of Norfolk, State of Virginia; Vincent Innerarity, of Madrid, Kingdom of Spain; Harriette Deschappelles and E. Le Breton Deschappelles, her husband, Eliza M. Barton, Cecille V. Wilson, William H. Wilson, James Wilson, Corrinne A. Wilson, all of New Orleans, State of Louisian*na*; Harriet A. Wilson, of Emmetsburg, State of Maryland; John Wilson, of Houston, State of Texas; Heloise Cruzat and William Cruzat, her husband, of New Orleans, State of Louisian*na*; Eugene Hulse and Melanie Hulse, of Dennison, State of Texas; Sidney Hulse, of San Francisco, State of California; Sarah H. Hulse, Mary V. Hulse, and John Hulse, of New Orleans, State of Louisian*na*; and Emma H. Taylor, of Pensacola, State of Florida; complainants.

The defendant by protestation, not confessing or acknowledging all or any of the pretended matters and things in said complainant's bill of complaint, mentioned and contained to be true, in such sort, manner, and form, as the same are therein set forth and alleged for plea to the whole of said bill says: That the said bill is based upon and seeks to revive a bill or amended petition which was filed on the 14th day of December, 1878, which said amended petition constituted a separate and independent suit from the original suit filed herein by Theodore Dalcour, of Matanzas, in the island of Cuba; of Auguste Dalcour, of Ellicott Mills, in Maryland; Sophia Dalcour, the wife of Theodore Sanchez, of Salvador, of Cuba, and said Sanchez, as her husband, Theresa
109 Dalcour, the wife of Eugene B. Oliver, of Lafayette Parish, in Louisiana, and of said Eugene B. Oliver, as her husband, all of whom are the children of Sophia or Susan Forbes, deceased; Stephen Tennant and Henrietta Tennant, of Lancashire, in England; of Leocadie Tennant, of Liverpool, in England; of Blanche Tennant, the wife of Robert Bruce, and said Robert Bruce, of Scotland; and Jules Fontena, of Bayonne, in France, all the children of Camille Dalcour, the daughter of Sophia or Susan Forbes; and Edward Depestre and Louisa Depestre, of the island of Cuba, and Jule Depestre, the wife of Jose M. Gonser, of London, England, and of her husband, Jose M. Gonser, and that said original suit filed on the 14th day of December, 1878, as aforesaid, was not filed within three years from the 10th day of June, 1872,

as required by the provisions of an act of Congress entitled "An act to extend the provisions of an act entitled 'An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Mississippi, and for other purposes;'" approved June 10th, 1872. Therefore this defendant pleads the said act of Congress in bar in the said complainant's bill, and prays the judgment of this honorable court whether it shall be compelled to make any further answer to said bill, and prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

J. N. STRIPLING,
U. S. Atty. So. Dist. Fla

UNITED STATES OF AMERICA,
Southern District of Florida.

J. N. Stripling being duly sworn, says that he is attorney of the United States for the Southern District of Florida; that the foregoing plea is not interposed for delay, and that the matters and things set forth therein are true in point of fact.

J. N. STRIPLING.

110 Sworn to and subscribed before me this 27 day of Aug., A. D. 1902.

E. D. DODGE,
Deputy Clerk U. S. Dist. Court.

I, J. N. Stripling, United States attorney for the Southern District of Florida, and attorney for the United States in the above-stated cause, do hereby certify that in my opinion the foregoing plea is well founded in point of law.

J. N. STRIPLING,
United States Attorney.

(Endorsed:) "# 210, Pg. 224, L. I. In the District Court of the United States for the Southern District of Florida. Theodore Dalcour et al. vs. United States of America. Plea to the bill of complaint. Filed Aug. 27, 1902. E. O. Locke, clerk, by A. D. Dodge, dep. clerk."

111 *Motion to strike plea.*

In the District Court of the United States for the Southern District of Florida.

Theodore Dalcour, Gustave Dalcour, Clavatta Dalcour, wife of John Cowden, John Cowden, Eugene Dalcour, Frank Dalcour, Clemintine Dalcour, Antoinette Dalcour, wife of Edward Dyer, Edward Dyer, Francoise Bellchase, John B. Olovier, Louisa M. Olivier, wife of P. S. Winchester, Stephen Tennant, Henrietta Tennant, Leocadie Tennant, wife of A. J. Morrison, A. J. Morrison, Blanche Bruce, Robert Bruce, Edmund de Gonser, Joseph de Gonser, Mary de Gonser, by Joseph de Gonser, her next friend, Julie de Gonser, wife of J. G. del Sallo, Louisa de Gonser, wife of Louis the Count of Bescuccia, Henry de Gonser, Antoinette de Gonser, Jules Fontena, John Gillespie Innerarity, Helen Drucos, Marcal T. Durcos, Louis M. Innerarity, Emanuel Innerarity, Emanuel H. Innerarity, Margaret Hiern, Charles H. Hiern, James J. Innerarity, Fanny Wycoff, Cornelius Wycoff, Eloisa Wilson, Albert H. W. Innerarity, Eliza Z. Boggs, R. N. Boggs, Heloise or Eliza Minor, Vincent Innerarity, Harriette Deschappelles, E. Le Breton Deschappelles, Eliza M. Barton, Cecile V. Wilson, William H. Wilson, Corine A. Wilson, Harriett A. Wilson, John Wilson, Heloise Cruzat, William Cruzat, Eugene Hulse, Melanie Hulse, Sidney Hulse, Sarah H. Hulse, Mary V. Hulse, John Hulse, and Emma Taylor

vs.

United States of America.

The complainants move to strike from the files the paper called a plea, filed by the defendant August 27th, 1902, because—

(1) It does not contain any matter which it is permissible to plead to the bill of revivor.

(2) It purports to be a plea to the bill called a bill of revivor, but is in fact a plea to the amendment to the original bill filed by leave of court December 14th, 1878.

(3) It purports to be a plea to the whole of the bill called a bill of revivor, and hence to the revivor as to all the parties to the original bill and amendment thereto, while in fact it is a plea to that part of the bill called a bill of revivor, alleged in the plea to be based on the amendment of the bill filed December 14, 1878.

112 (4) There is no bill of revivor or proceeding in the nature thereof pending and undetermined in this court, a final order having been made in said cause upon said bill, called a bill of revivor, thus disposing of the said bill and leaving no action to be taken by the defendant except upon the original or amended bill.

W. A. BLOUNT,
W. W. DEWHURST,
Solicitors for Complainants.

(The foregoing has the following endorsement:) "# 210. Pg. 224, L, 1. District Court of the United States, Southern District of Florida. Dalcour et al. vs. United States of America. Motion to strike plea. Filed Oct. 3, 1902. E. O. Locke, clerk."

113 *Order striking plea.*

In the District Court of the United States in and for the Southern District of Florida.

THEODORE DALCOUR ET AL.)
vs.
UNITED STATES.)

This cause coming on to be heard upon the motion of the complainants herein to strike the plea of the defendant, the United States, filed on the 27th day of August, 1902, and having been fully heard and considered, it is ordered that said motion be granted, with leave for the defendant, the United States, to further plead as advised.

JAMES W. LOCKE, *Judge.*

Jacksonville, Fla., November 21st, 1902.

(The foregoing is endorsed as follows:) "# 210. P. 225, L. 1. United States District Court, Southern District of Florida. Theodore Dalcour et al. vs. The United States. Order striking plea. Filed Nov. 21, 1902. E. O. Locke, clerk. Ent'd D. C. Order Book, p. . Ent'd Dist. Ct. Min., p. 504."

114 *Motion to strike amendment to bill.*

In the District Court of the United States, Southern District of Florida.

THEODORE DALCOUR ET AL.)
vs.
THE UNITED STATES.)

And now comes the defendant, by leave of the court first had and obtained, and shows to the court that the original petition filed by Theodore Dalcour et al. on the third day of March, A. D. 1875, seeks the confirmation of a grant of about 1,800,000 acres of land alleged to have been made by the King of Spain on the 10th day of January, A. D. 1818, to John Forbes; that on the 14th day of December, A. D. 1878, an amendment was filed to said original petition, by leave of court, seeking confirmation of title to lands alleged to have granted on the 10th day of January, A. D. 1818, by the King of Spain to John Forbes, John Innerarity, and James Innerarity, partners under the name and style of John Forbes and Company, which amendment introduces a large number of other individuals alleged to be the heirs of John Innerarity and James Innerarity, as shown by said amendment, and to which reference is prayed, as parties plaintiff in said suit, and the defendant now moves the court to strike said amendment from the files of this suit, upon the ground that the same constitutes a new and wholly different suit, and upon the ground that the same was not instituted and filed within three years from the 10th day of June, A. D. 1872, as required by law.

Jacksonville, Florida, November 21, 1902.

J. N. STRIPLING,
United States Attorney.

(The foregoing has the following endorsement:) "#210. Pg. 224, L. 1. In the District of the United States, Southern District of Florida. Theodore Dalcour et al. vs. The United States. Motion to strike amendment to bill. Filed Nov. 21, 1902. E. O. Locke, clerk. By E. D. Dodge, deputy clerk."

115 *Order denying motion to strike amended petition.*

In the District Court of the United States in and for the Southern District of Florida.

THEODODE DALCOUR ET AL. }
vs.
THE UNITED STATES. }

This cause, coming on to be heard upon the motion of *of* the defendant to strike the amended petition herein, and having been duly heard by argument of counsel for the petitioners and for the United States, now, upon consideration thereof, it is ordered that said motion be, and the same is hereby, denied, and the defendant have 60 days to further plead as advised.

Jacksonville, Fla., Mar. 5th, 1903.

JAMES W. LOCKE, *Judge.*

(The foregoing has the following endorsement:) "#210. Pg. 225, L. 1. United States Dist. Court, So. Dist. of Florida. Theodore Dalcour et al. vs. United States. Order denying motion to strike amended petition. Filed Mch. 3rd, 1903. E. O. Locke, clerk, by E. D. Dodge, deputy clerk. Ent'd in Dist. Ct. Min., pg. 559."

116 *Answer of the United States.*

In the District Court of the United States for the Southern District of Florida.

THEODORE DALCOUR ET AL. }
vs.
THE UNITED STATES. }

To the honorable the Judge of the District Court of the United States for the Southern District of Florida.

The answer of the United States, defendant, to the bill of complaint of Theodore Dalcour and others, heirs of John Forbes, deceased, &c.; and of Fanny W. J. Innerarity, tutrix, &c., and others, descendants and heirs at law of James Innerarity, deceased; and of Victorre Innerarity and others, descendants and heirs at law of John I. Innerarity, deceased, &c., complainants and petitioners.

This defendant saving and reserving to itself all right of exception to the said bill of complaint, for answer thereto saith:

I.

That heretofore, to wit, on the 2nd day of December in the year eighteen hundred and twenty-eight, John Innerarity, whose descendants

and heirs at law are named as complainants in the petition herein on behalf of John Forbes & Co., filed a petition before the honorable Henry M. Breckenridge, judge of the Superior Court for the Western District of Florida, for the recovery of the very same rights, claims, and causes of action as in this petition now pending are sought to be recovered. And on the 24th day of March, 1829, the said John Innerarity and James Innerarity, for themselves as surviving partners of the firm of John Forbes & Co., and for the heirs and legal representatives of John Forbes, deceased, who, with the petitioners, composed the firm of John Forbes & Co., filed a further petition and amendment before the
117 honorable judge of the Superior Court in and for the Western District of the Territory of Florida, specially authorized by law to adjudicate the claims to land in the said district, for the confirmation of the very same grant and recovery of the very same rights and claims as in this petition are sought to be confirmed and recovered, as appears by a copy of the said petition hereto attached, marked "Exhibit A," and made a part of this answer; and such proceedings were thereafter had that this defendant filed its answer to said petition in said court, which said answer is hereto attached, marked "Exhibit B," and made a part of this answer; and proofs taken and the matter duly argued by counsel for the respective parties; and afterwards, on due consideration thereof, on the 6th day of November, 1830, a decree was made, signed, filed, and entered in said cause rejecting and refusing the prayer of said petition, a copy of which decree is hereto attached, marked "Exhibit C," and made a part of this answer, and the proceedings theretofore had in said cause were duly enrolled and *and* are in the records of said court, which records are, by operation of law, now in the custody and keeping of the clerk of the Circuit Court of Escambia County, Florida. And defendant says that no appeal was ever taken from said decree, nor has said decree ever been set aside, vacated, or held for naught, but was at the time it was entered and enrolled, and has ever since continued to be, in full force and effect, all of which more fully and at large appears by said bill, answer, and decree so formally exhibited, to which bill, answer, record, and decree, for greater certainty, defendant prays leave to refer.

And defendant further answering says, that the proceedings heretofore referred to were proceedings on the merits of the case, and that the rejection of said former petition was a rejection on its merits, and not otherwise; and that the parties to this suit are—some of them—the very same parties, and the others the heirs and legal representatives of the other parties, and all have the very same and no other interest, and the parties to the above proceedings; and that the claim and cause of petition so finally adjudicated was the same claim, right, and cause of petition as that whereon the present petitioners have founded their petition and none other.

118 II.

And this defendant further answering says, that it is true that this claim now pending in this proceeding was presented to the commissioners appointed under the act of Congress approved May 8, 1822, "An act for ascertaining claims and titles to land within the Territory of Florida;" that the said commissioners proceeded to enquire into the validity of said

claim, and that they reported the testimony with their opinions to the Secretary of the Treasury to be laid before Congress for their determination; and that the said report recited a transcript of the alleged grant to John Forbes & Co. with the accompanying papers; that the said report and claim were never acted upon by Congress.

And defendant further answering says, that afterwards, under the provision of the sixth section of the act of Congress approved May 23rd, 1828, "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," the very same claim was presented to and received and adjudicated by the judge of the Superior Court of the Western District of Florida, upon the petition of the successors of John Forbes and Co. and the ancesters of the present claimants, according to the forms, rules, regulations, conditions, and limitations prescribed to the district judge, and claimants in the State of Missouri, by act of Congress approved May 26, 1824, entitled "An act enabling the claimants to lands within the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims;" that in said proceeding the above-named transcript of the grant and accompanying papers and the evidence before said commissioners were presented and received and admitted in evidence; and the original grant, which was obtained from the Spanish archives at the city of Havana, island of Cuba, was introduced in evidence by the United States, and received and admitted by the judge; and that the decree of the judge was made, entered, and published rejecting said claim, the particulars of which proceeding are set out at length in the first paragraph of this answer; and defendant further answering says, that no appeal was taked from this judgment or decree, and by the express provision of said statutes the same became final and conclusive.

119 III.

And defendant further answering says, that the court has not jurisdiction over the subject-matter of this proceeding, because there is no statute or resolution or permission, general or special, authorizing the bringing of this proceeding to establish a claim for lands alleged to have been granted to John Forbes and Co., as set forth in the petition herein; and especially that the act of Congress of June 22, 1860, "An act for the final adjustment of private land claims in the States of Florida, Louisiana, and Missouri, and for other purposes," under which this proceeding has been instituted, does not confer any jurisdiction to hear, try, and determine the same; that the provision of the act of 1828, that decrees made thereunder should be final and conclusive, was not repealed by the act of 1860, but remained and still remains of full force and effect; that said claims which have been declared to be invalid from intrinsic defects, or fraudulent, under the acts of 1828, were not made valid by the act of 1860; and that the claim in the petition now pending had been rejected by the tribunal and public officer acting under authority of Congress, as fully and at large is set out in the first paragraph of this answer, and is therefore expressly excluded from the jurisdiction of this court by the 11th section of the act of 1860 aforesaid.

IV.

And defendant further answering says, that if this proceeding could be maintained under the act of 1860, and the facts reported before the commissioners should be received in evidence, as stated in the petition herein, then, under the principles of said act, the facts found in the decree of the district judge, set out at length in the first paragraph of this answer, must also be received in evidence.

V.

And defendant further answering says, it denied that the alleged grant mentioned in the petition herein was ever made by the officers
120 whose names are thereto affixed, and says that the grant and title papers presented to the commissioners, whose report is relied upon in this proceeding to sustian the claim, are exemplifications of altered and forged papers, the alterations being in the dates of the originals, so as to bring them within the terms of the eighth article of the treaty of 1819 between Spain and the United States.

And further defendant says, that for a long time before the alleged grant to John Forbes & Co. purports to have been made, negotiations were pending between the United States and Spain for the cession of East and West Florida to the United States, which were known to the Spanish authorities in America, and to this firm of John Forbes and Co., that much scandal and many charges of bad faith had grown out of the fact that grants had been made of great tracts of land whilst these negotiations were in progress; that these grants had been made for the purpose of alienation and not for the purposes of colonization and settlement, which latter had always been the avowed policy of the Government of Spain in her colonies; that they were made as pure donations or without the formalities and solemnities usual and required in such cases; that the alleged grant set up in the petition herein was of this character, made without a survey, without any designation whatever of the quantity of land pretended to be granted, and without any knowledge on the part of the Spanish authorities at Havana, or of the grantees of the quantity included in the generally stated boundaries in the request or petition of the said John Forbes & Co. Defendant further says, that the alleged grant purporting to be in consideration of losses which had been sustained by the said John Forbes & Co. from Indian depredations, for which the Spanish Government was liable; that there was no statement of said losses, nor examination into the amount or validity thereof; that the Spanish Government was not liable to pay the same, if such there were, and
121 that for these reasons the grant, if made at all and within the time limited in the treaty, was made without proper authority by the captain-general of Cuba and is null and void.

VI.

And this defendant further answering says, that the immense tract of land pretended to have been granted to the ancestors of these petitioners was, at the time the said pretended grant purports to have been made, and continued up to the change of government to be in the possession

of the Indians as their residence and common hunting grounds; and the said John Forbes & Co. were never in possession of the same.

Wherefore the defendant, having fully answered the allegations of the petition herein, prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

J. N. STRIPLING,
United States Attorney for the Southern District of Florida.

122 EXHIBIT A.

To the honorable, the Judge of the Superior Court in and for the Western District of the Territory of Florida, specially authorized by law to receive and adjudicate the claims to land in the said district.

Your petitioners, James Innerarity and John Innerarity, for themselves, and as the surviving partners of the mercantile firm of John Forbes & Co., and for and on behalf of Francisco Dalcour, son-in-law and executor of John Forbes; Charlotte Elizabeth Dalcour, Camilla Juana Dalcour, Catalina Sophia Dalcour, Juan Theodore Dalcour, Augustin Jose Dalcour, Teresa Laura Dalcour, Edmond Depestre, children of the former and of Sophia, daughter of John Forbes; Juana Depestre, wife of said Edmond, and daughter of John Forbes, the heirs and legal representatives of John Forbes, late of the Island of Cuba, who, together with your petitioners, composed the said firm of "John Forbes and Company," humbly represent that they have a claim to a tract of land within the district aforesaid and within the jurisdiction of this honorable court, containing a larger quantity of acres than the commissioners of the United States were authorized to decide and which has not been settled under the provisions of the act of Congress supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida, which said claim was presented to the said commissioners and filed in their office in pursuance of the provisions of an act of Congress for the ascertaining of claims and titles to land in the Territory of Florida, and reported by the said commissioners to the Secretary of the Treasury in conformity to law, and by him submitted to Congress, to which said reports and documents so as aforesaid made and transmitted, your petitioners refer in Documents 111, page 39, of the "letter from the Secretary of the Treasury, transmitting copies of the reports of the commissioners of land claims in east and west Florida," on the 22nd of February, 1825, as a part of this their petition, by a reference to which your petitioners allege that this honorable court will see the origin of the title and date of the grant, the consideration which moved the then Government of the country to make the same, and the boundaries thereof.

123 Your petitioners further represent to your honor that the said claim has not been annulled by the treaty of the 2nd of February, 1819, nor by the decree of the King of Spain ratifying the same, and was not reported by the commissioners as either antedated or forged, but the said grant and evidence of title presented to, and reported by them as aforesaid, in their report to be genuine, and no question of the validity of the said title of your petitioners suggested, except some doubt of the power of the granting Spanish officers without reference to the King of Spain, in cases of grants of similar extent.

But your petitioners submit that this doubt is ill founded, and will at once be entirely dissipated by the slightest reference to the uniform practices in cases of this sort, in all the Spanish colonies, and the laws and ordinances of Spain which do not limit the governors of provinces in cases of this sort, but leave them entirely at discretion to act for the benefit of the Crown according to circumstances and their best judgments. Your petitioners would, however, suggest to your honor, that even if any reasonable doubt could exist on similar questions in cases of grants purely gratuitous, none whatever ought be felt in the case of a grant made for a valuable consideration, and payment of claim for which it is admitted the Government was liable, as was the fact in regard to the said grant of your petitioners. To deny a proposition so clearly self-evident would be to deny the sover'ignty of the very power from which the only right we have is derived, and that a sover'ign State could not pay her lawful debts, nor satisfy the just claims against her, with such means as she had at command without the risk of subjecting herself to the censure of her successor. Your petitioners further represent to your honor that the claim aforesaid is bounded and described as follows, to wit: A tract of land situate between the river Apalachicola to the east and Choctawhachie to the west, the ocean on the south, and on the north by a line beginning opposite to the creek known by the name of "Sweet Water Creek," lying on the eastern side of the Apalachicola River about three and a half miles north of the bluff known by the name of Allum Bluff, and running west to the Choctawatchie; thence following the sinuosities of said river to its mouth on the Bay of St. Rosa, thence winding
124 along the eastern shore of the same to the sea, the high waters of which form the limits to the south, until the said line joins the boundaries of the land formerly acquired by the said house of Forbes & Co., on the west of the Apalachicola in front of the island of Saint Vincent; thence running along the boundary line of said lands to the river Apalachicola, thence the course of said river to the point of departure of the line serving as the northern boundary line opposite to the aforesaid creek called Sweet Water Creek, containing about one million of acres, more than nine-tenths of which are absolutely barren, wholly unproductive and useless, and, indeed, your petitioners do not believe that the whole of said above-described lands contains a larger quantity than fifty thousand acres that are worth the expense of a survey thereof.

Your petitioners further represent to your honor that the said grant, having been made in conformity to the laws of Spain and consum'ated by the royal authority within the time during which that authority is admitted to have existed in full force, is protected and acknowledged by the principles of the law of nations, and is actually guaranteed by the 8th article of the treaty between the United States and Spain of the 22nd of February, 1819, to be held on the same footing and to the same extent as it would have been held had the government of the country where it is situated never been changed.

Your petitioners further represent that they are not apprised that any portion of the land claimed by the grant aforesaid is held, or claimed by any title adverse to their own, and humbly pray that the validity of their claim may be inquired into, according to the true and equitable intent

and meaning of the said treaty of the 22nd of February, 1819, between the King of Spain and the United States and the laws and ordinances of Spain under which it had its origin, and the acts of Congress authorizing its decision. And they further pray that upon a due consideration of the premises being had, the same may be confirmed by decree of this honorable court, and that, in the meantime, process may be issued against the United States according to law.

And as in duty bound they will ever pray, &c.

SAM'L ACRE,
Solicitor of Claimants.

125 EXHIBIT B.

To the Honorable Henry M. Brackenridge, judge of the Superior Court for the District of West Florida, sitting by virtue of the act of Congress of May 22nd, 1828, to adjudicate claims to land in said district.

The answer of Benjamin D. Wright, United States attorney for the district aforesaid, to the petition of James Innerarity and John Innerarity, for themselves and as surviving partners for the late mercantile firm of John Forbes & Co., and for the heirs and legal representatives of John Forbes, late of the island of Cuba, deceased, saving and reserving to the said United States all advantage from the many imperfections apparent in said petition, says that the firm of John Forbes & Company procured the said pretended grant by fraud and imposition upon the government of the island of Cuba, inasmuch as the said John Forbes & Co., in order to induce the authorities of said island to make the said grant of land, represented to the said authorities, and pretended to prove by depositions, that the said John Forbes and Company had met with many and severe losses, by robberies and other outrages committed by the Indians, all of which is and was utterly untrue; and had it been otherwise this respondent alleges that by the laws and usages of the Government of Spain and of nations, the Spanish Government was not responsible for the same or any part thereof. And this respondent, further answering, says that for the space of two or three years before the making of the treaty of 22d February, 1819, it was well and generally known that the negotiations, then pending between the Governments of the United States and Spain, must result in the cession of East and West Florida to the United States. Many persons desirous of speculating in lands made application to the Spanish authorities and procured grants, in a manner altogether at variance with that prescribed by the laws of Spain for the disposal of the royal domain and calculated to defraud the United States. The officers of the Spanish Government knowing that after the Floridas should be ceded, the Government of the United States could not hold them responsible, and *the* their own Government would have no interest in looking into their conduct, scarcely refused any application for lands, however extraordinary or extravagant.

126 Many grants were therefore made about the period above mentioned without the least regard to the laws and ordinances of Spain or the interests of the Spanish Government, but solely with a view to the interests of private individuals or companies of speculators. Of this description is the grant in question, pretended to have been made to

the house of John Forbes & Company. If made at all, it was made without any consideration or adequate inducement, without proof of the losses complained of by the house of John Forbes & Co. in their application to the captain-general of the island of Cuba, without any survey or measurement of the land, without having had any valuation set upon it, and without any acquaintance on the part of the Spanish authorities with the quantity of land pretended to be granted, which, as this respondent is informed and believes, is about three millions of acres.

But this respondent further answering says that he does not know and cannot admit that any such grant and title papers as those mentioned in the petition of the said petitioners were ever made or executed by the officers of the Spanish Government whose names are thereto affixed, but expressly requires proof of the same and the production of the supposed original title papers.

And this respondent further answering says that the said tract of land pretended to have been granted to the said petitioners was at the time when the said pretended grant purports to have been made, had always been and continued up to the change of government to be in the possession of the Indians as their residence and common hunting grounds; and the said John Forbes & Co. were never in possession of the same.

This respondent further answering says that the said James Innerarity and John Innerarity were not, in the purchase or the grant of the said land or otherwise, partners of the said firm of John Forbes & Co.; said grant was not made to them nor have they any interest in the said grant of land, and therefore they have no right of petitioning for the same; and further that the supposed grant under which the petitioners claim
127 title to the land was made to the said John Forbes and Company, and this respondent alleges that the said John Forbes before the filing of the said petition departed this life. If he had any heirs and legal representatives, such heirs and representatives should have been parties petitioners herein and ought to have been named by their Christian and surnames, and not merely by the designation and name of heirs and legal representatives of John Forbes, deceased.

This respondent further answering says that the said John Forbes & Co. were merchants, traders, living in towns, not farmers, cultivators of the soil, or stock raisers. They did not want land except for speculation, to the injury of others who would have been deprived of the opportunity of obtaining land by reason of their monopoly. They were all Scotchmen, native subjects of the King of Great Britain, not Spanish subjects, and had never taken the oath of allegiance to his Catholic Majesty. They could not therefore receive or own lands or transmit the same by gift, sale, or devise, or inheritance. And the respondent further says that the said John Forbes and others of the firm died in foreign countries, without legal heirs or representatives in Spain or the dependencies thereof, previous to the change of government in the Floridas, and if they or either of them left any heirs or other legal representatives they were the subjects and residents of Great Britain and not of Spain or the dependencies thereof, and if the said John Forbes or other members of the said firm had any interest in said land the same escheated upon his decease to the Government.

This respondent further answering says that it was never the intention

of the King of Spain or his Government that such large tracts of land should be disposed of either by way of gratuity, sale, or composition without the approbation of His Majesty expressly given, and this respondent alleges that no officers of the Crown, without the royal assent first obtained, possessed the power of granting such large portions of the public domain, and especially that the said captain-general of the island of Cuba had no such power nor was such royal assent procured for the grant set forth in the said petitition. If such power existed or such consent was procured, this respondent expressly requires proof of the same. The
128 policy and laws of Spain have always been in relation to gratuities to allow each family a small portion of land, as much as such family could cultivate, but not to give large quantities of land to some to the prejudice of others, and in making sales to have the land valued, the fiscal ministers consulted, the land disposed of according to the valuation, and then not in large quantities lest the grants "might be hurtful to poor people."

This respondent further answering says that the said several documents mentioned and referred to in the report of the commissioners, and to which the said petition refers, are incompetent, lacking authentication and credit, and this respondent objects to the use of them as evidence, and denies the truth of all the statements and matters of fact in the said documents asserted and set forth, and this respondent expressly requires full proof of all said documents and matters of fact therein stated, recited, and set forth.

And this respondent having fully answered the petition of the said petitioners, prays that the said United States may be hence dismissed with their reasonable costs and charges by them about their defense in this behalf expended.

BENJ. D. WRIGHT,
U. S. Attorney, W. F.

129 EXHIBIT C.

JAMES AND JOHN INNERARITY AND THE HEIRS of John Forbes, dec'd, petitioners, *v.* THE UNITED STATES, RESPONDENT. } On petition.

The petitio'ers claim a tract of land situated between the *the* rivers Appalachicola and Choctawhatchie, St. Rosa's Bay, and the sea, &c., said to contain about one million acres, nine-tenths of which the petitioner' state to be barren and unproductive, and not worth the expense of a survey.

This cause has been very ably and fully argued by the counsel for the petitioners and on the part of the United States.

The powers of the Spanish officers to make grants, the ordinances of the Spanish Kings on the subject of granting land, have been sought after with minute research, in order, if possible, to ascertain the system and the rules established by the Spanish Crown. The particular merits and considerations of the grant under which the petitioners claim have also undergone the severest scrutiny. The subject, however, which has been taken as the last in order by the counsel will be the first to claim

the consideration of the court, and it is whether this be a genuine grant within the time fixed by the treaty, because, if it be not, it is useless to take into view the authority of the granting power or the regularity of the grant.

It is contended for the claimants that according to the Spanish law the proper and only evidence of the grant is that offered by them, which is an exemplification or certified copy of the original in the Spanish archives in Havana. That on the face of this exemplification the grant appears to have been made within the time. They deny that the document marked (A), which purports to be the original minutes and
130 entries procured from the archives, can be used in courts of justice for any purpose. But in the opinion of this court the Spanish law does not furnish the rule of evidence to govern the investigation; this must be conducted according to the law of the court which takes cognizance of the matter, and not to the law of the place or sover'ignty where the right was acquired. Exemplifications of records under seal are the usual and proper evidence in our courts where the original is not under the control or subject to their inspection, but there is no reason why the original record when known and ascertained as such should not be the proper and best evidence. In the claims to lands both in this Territory and in Louisiana the original documents have always been received when proved to be such, while the exemplified copies have been admitted only from necessity. The greater part of these claims have been sustained on the original documents, and if this were not the case serious difficulties might be imposed on them, as it would be impossible for the claimants to obtain certified copies of papers in their own keeping.

I will, however, examine the Spanish law relied upon by the counsel for the claimants, and which has been urged with great earnestness as well as ingenuity. The Curia Filipica, a Spanish work of great authority in relation to the proceedings and practice of the courts of justice in Spain, has been cited. Under the head of Pruebas (evidence), page 93, section 31, it is laid down that the instrument (that is, the public instrument in contradistinction to common written evidence) consists of three kinds, viz, registro, original, y traslado. I have carefully translated this section, as well as two others not referred to by counsel for the claimants, both of which are necessary to a proper understanding of the Spanish law on this subject. The registro is the original min-
131 utes, or first draft, which remains in the office of the escribano, notary, or other officer, for safe keeping, and is that from which the original is made out and transcribed, and by which any doubts that may arise on the original are to be determined: y determinan por ellas las dudas que en et so ofriciera. The original, when properly authenticated, by the notary before whom the act was passed, is that which is to be received in evidence; the first minute is of no further use except as before mentioned, to remain on deposit, to furnish other exemplifications when they may be wanted, and as the model by which to determine their correctness. The traslado is a copy of the original, or exemplification, but it is not evidence in courts unless made under the authority of a judge and citation to the opposite party. It is obvious that the use of the traslado is to save the trouble of filing the original or procuring several originals as a party may have different suits, or wish to keep the original in his possession.

Under this law the counsel for the claimants contend that the original minute or registro can in no case be used as evidence in courts of justice; that its only use is to remain in the office of the notary. But the law declares that one of its most important objects is to determine the correctness of the original, when any doubts may arise upon it; whether this is to be referred to the notary or keeper of the minute, as the sole and exclusive judge, or whether the court before whom the doubt may arise is, of itself, to compare and ascertain, does not appear to be clearly expressed, but I think that this court, according to another section of the Curia Filipica, under the present circumstances, is invested with that power. This is the 23rd section, page 94 & 95. According to this law, if the notary deny having made the instrument, he is to be believed unless the contrary be proved; but if he acknowledge the instru-
132 ment, and the subscribing witnesses deny it, in this case, if the notary be of good reputation and the instrument agree with the registro, the notary is to be believed and not the witnesses. This certainly implies that it is not the exclusive province of the notary to compare the original with the registro. And again it is declared that the same rule prevails when the notary and the witnesses both say they have no recollection (no se acuerden) of the matter. It is further laid down in the same section that if it be admitted that the notary did make the instrument but that he made it falsely and erroneously—that is, that the original is not a true exemplification of the minute—that then the notary is not entitled to faith, and if he be dead, or absent, the judge may proceed, with the assistance of sworn experts, to determine the matter: es a arbitrio la determinacion si vale o no. I am aware that the question here supposed may appear from the text to be confined to those arising in respect of handwriting merely; but practically it must evidently extend to all cases where fraud or mistake is alleged against the notary. It is proper to observe in justice to the claimants that although the law cited from the Curia Filipica, relates to notarial acts, yet from the nature of Spanish records of all kinds where a protocol or registro is required it is equally applicable. Applications for grants of land are made by petition on which follows certain orders and reports, and the final decree thereon granting or refusing the prayer; all these are carried on through the intervention of a notary, who gives the necessary notices, &c., and keeps the whole as a register of original entries. An exemplification of these, or what is called the original instead of a formal patent, as with us, constitutes in the Spanish tribunals the highest evidence of title. While that original remains unimpeached it is conclusive or at least complete. But in this instance it is impeached, and the in opinion of the court it becomes necessary to investigate, and this according to the very
133 law appealed to by the claimants. It is admitted, however, that this investigation or inquiry must be conducted judicially. That which may justify the conscience of an individual, or suffice a committee of Congress, or a board of commissioners, may be insufficient for a judge, who is to determine according to known and fixed rules of decision, and not according to his discretion.

In pursuing this inquiry under the belief that in the present case it is competent to the court to look beyond the original, and for all the purposes that justice may require to compare it with the registro, the next

thing to be determined is whether the document marked "(A)" can be regularly and judicially received as the registro. A judge should not decide according to his private impressions; if he decide at all, he should base his decision upon some distinct and settled principle, or at least on some just and reasonable deduction. Various reasons entitled to considerable weight have been urged on the part of the claimants against the receiving the document just mentioned as the genuine registro. They contend that if it was officially obtained from the Spanish authorities it must have been in virtue of some act of Congress, making it evidence, which could not be done by the mere act of the executive, as the second article of the treaty, under which the agent was appointed, does not relate to the archives or titles to private property, but to the titles of Spain to the territories ceded by her. That if this be the case, the executive could not make evidence in the cause by procuring this document through an unofficial agent, but a regular commission was necessary to prove its identity, and with notice to the opposite party. Because the papers never having been in the possession of either of the parties, and deriving its character only from the original deposit, or official hands where it was found, that fact was essential to entitle it to be received—unless
134 officially obtained so as to be continued in the hands of the agent as keeper of the document in the place of the keeper of the archives, its identity is a fact which ought to be established. It was further contended that the commission to the agent, and his correspondence with the captain-general of Cuba, being only certified copies from the originals filed with the clerk of the Superior Court of the Middle District are not admissable in evidence. And further, that the special agent not being an officer known to the law, acting under oath, he should have sworn that the document as produced was the same which he had received in Cuba, and that it was in the same condition as when so received. That although in the minds of counsel no imputation could attach to the individual who procured the document, yet it was an inference of law that the one by whom the writing was produced must account for the suspicious alterations and erasures.

With respect to the last reason, it is sufficient to remark that if the United States were a party of whom such a suspicion could be predicted, the idea would be repelled by the simple fact that these alterations and erasures are to its prejudice, and in favor of the claimants; for without such alterations the grant on the face of it would be void. The court does not agree, however, with counsel on the part of the United States, who contend that the mere circumstance of serving a subpœna duces tecum on the agent to bring into court the registro makes it the evidence of the claimants, although not offered by them, but objected to after discovering, as they allege, that it was a different writing from what they had expected. It is evident, however, both from the circumstances just mentioned, and from the notice contained in the brief of the counsel, that the parties here did mean to rely on this document, and only changed their minds on the discovery of its defects. But I consider its admissibility put to rest by the testimony taken under a commission by
135 consent, and which has been received in evidence in this case. It is noted by the commissioners before whom the testimony was taken that it was admitted "by both parties that the official signatures to

the document marked '(A)' under which the petitioners claim are genuine." I consider this admission as superceding all further inquiry. The official signatures are admitted to be genuine, and it is further acknowledged that the document itself is the one under which the petitioners claim. Moreover, the original, or exemplification, when compared with the registro, evidently appears to be a literal copy from it, following the alterations.

The supposed grant appears to have originated in a petition by John Forbes for himself and company, and presented to the captain-general in Havana. The first order taken upon it by the captain-general (and which is written without erasure) is dated Havana, 5th of January, 1818. The next is that made by the assessor-general, which has the words "January the seventh" written in paler ink over "February the fourteenth." The subsequent orders have been altered to conform to the preceding, but with so little care that the original word is almost as plainly visible as that which is overwritten. It has been remarked by the counsel for claimants that the alteration from "February" back to "January" may have been made at the time of signing, and which might be lawful, at least innocent, inasmuch as the signing, even if in February, would have been a year before the treaty, and could not have been done in contemplation of the provision which renders void all grants made subsequently to the 24th of January, 1818. It is also said that the alterations appear to be in the same ink with the signatures. It is possible that the dates may have been altered at the time of signing, but in this supposition there was no perceptable reason for altering the date from January when it would have been as good if made in February. The inducement
136 for an alteration of the registro a year or two afterwards, when the time became essential in consequence of the treaty, is obvious. The alterations are not in matters of form or such matters of substance as to cause a mere variation in the terms of the grant, but they are of a nature to effect its very existence. Without them it would be no better than blank paper. Yet even in this case the judge ought not to follow his individual impressions when contrary to settled rules of decision. It is undoubtedly true that according to those rules every reasonable and fair presumption is to be taken in favor of the record and of the public officer. A mere alteration of the date, names, or other substantial matter in the original minute or record, by erasure or interlineation, does not of itself vitiate the record. It is only when this is corruptly done, for it may have been done in order to conform to the truth. Besides, it would be unjust to implicate the conduct and character of the officer in an inquiry to which he is no party and where he has no opportunity of defense. But whatever doubt may exist according to our legal ideas, I find it to my mind satisfactorily decided by the Spanish law—it is not a matter relating to the form of trial, but to the validity of the record itself, which is the foundation of the claim. I refer to the Curia Filipica, page 93, sec. 30. It declares expressly that the public instrument which does not follow those forms and solemnities, which it proceeds to enumerate, is null and void; and among these it is declared to be necessary that there be a salvado, as it is called, of the errors and alterations—salvado antes de las firmas las enmiendas y erratas. There is no salvado to the alterations made in this registro contrary, as far as my experience goes, to the invariable practice in such cases.

The paper was intended to remain in the archives in Havana, and it was supposed that nothing but the original would be used elsewhere; so that if the original would appear fair on its face, the alterations in the registro would be of no importance. If the registro had contained
137 a note before the signatures, of the alteration of the date from "February" to "January," the exemplification, if a true one, would have contained it also, and in all probability would have led to rejection of the claim by the board of commissioners. But unless the exemplifications were also a facsimile the erasures would not appear. It is not intended by anything that has been said to implicate any of the parties in interest in this case in the alterations of the record at Havana. If the document had ever been in their keeping or possession it would become them to account for those alterations, otherwise suspicion would rest upon them; but the circumstances of their interest and probable advantage to be derived from the alteration is not sufficient to warrant a legal inference that they are either the authors of them or procured them to be made. As to the parties here who, as members of the firm, have been engaged in prosecuting this claim, I am induced to believe from their anxiety in the first instance to obtain the registro, and afterwards on having an opportunity of inspecting it, their desire to reject it, that they were previously unacquainted with the alterations. Being fully satisfied that the claimants have no legal grant prior to the 24th of January, 1818, I feel myself bound to reject their petition. I also deem it unnecessary to consider the other points raised by counsel, especially as the greater part of them are now under advisement by the Supreme Court of the United States.

This cause having been at the special term of the Superior Court, held on the second Monday of September, heard, and the substance of the plaintiff's bill or petition appeared to be that they had a claim to a tract of land within the Western District of Florida, containing a quantity of acres greater than the land commissioners appointed under the several acts of Congress for the settlement and confirmation of private land claims were authorized to decide. That said claims had been pre-
138 sented to the said commissioners, and by them reported to the Secretary of the Treasury in conformity to law. That said claim had not been annulled by the treaty of 22nd of February, 1819, nor by the King of Spain ratifying the same, and had not been reported by the commissioners as either antedated or forged.

Whereupon and upon debate of the matter and inspecting the original title papers in this cause, the court doth think fit to so order and decree that for the reasons set forth in the foregoing opinion the prayer of the petitioners for the confirmation of the said claim to the said land be refused and rejected, and the same is hereby refused and rejected. And it is further ordered and decreed that the said petitioners pay as well as the costs of the said petitioners in this case, as those of the United States by them about their defense in this behalf expended.

(Saturday, 6th November, 1830.)

STATE OF FLORIDA, *Escambia County:*

DALCOUR ET AL.
vs.
THE UNITED STATES.

I, A. M. McMillan, clerk Circuit Court in and for said State and county, do hereby certify that the original records, files, and books containing the pleas and proceedings in the case of James and John Innerarity and the heirs of John Forbes, deceased, v. The United States, had in the United States District and Superior Court of West Florida, at Pensacola, begun and held on the sixth day of March, 1831, and continuing on different days until the sixth day of November, 1831, are in my custody and charge as clerk aforesaid, and that the foregoing pages containing the petitions, answer, and decree in said cause are true copies of the originals which are on file in my office as aforesaid.

A. M. MCMILLAN,
Clerk Circuit Court.

139 (The foregoing is endorsed as follows): "# 210. (P. 225.) L. 1. U. S. District Court, Southern District of Florida. T. Dalcour et al. vs. United States. Answer of U. S. Filed May 1, 1903. E. O. Locke, clerk."

140 *Replication.*

In the District Court of the United States for the Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES OF AMERICA.

The replyants, saving to themselves all and all manner of advantage of exceptions to the manifold errors and insufficiencies of said answer, filed herein by Joseph N. Stripling, esq., attorney of the United States, for the said United States, for replication thereunto say: That they will aver and prove their said petition to be true, certain, and sufficient in law, and under the act of Congress in such case provided. And the replyants say that the said answer of the attorney is uncertain, untrue, and insufficient, and that the matters and things therein contained are not sufficient to debar these petitioners from having their decree of confirmation as is by law directed. They deny all the matters of avoidance to their petition as entirely insufficient in law and equity.

All which matters and things replyants are ready to aver and prove as this honorable court shall award, and they humbly pray, as in and by their original petition (as amended) they have prayed, and for the causes therein, for the confirmation and approval of their titles, etc.

W. A. BLOUNT,
W. W. DEWHURST,
Counsel and Attorneys for Petitioners.

(The foregoing has the following indorsement:) "# 210. Pg. 225. L. 1. District Court of the United States for Southern District of Florida. Theodore Dalcour et al. vs. United States. Replication. Filed May 29, 1903. E. O. Locke, clerk."

141 *Order.*

In the District Court of the United States for the Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES OF AMERICA.

This cause coming on to be heard by consent of the parties for the appointment of a master pro hac vice, and it appearing to the court from an examination of the pleadings that the cause is ripe for such an appointment, upon consideration thereof it is ordered and decreed that R. B. Archibald, esq., a practicing solicitor of this court, be, and he is hereby, appointed master of this court herein, with directions, after due notice to the solicitors of record for the petitioners herein, and to the district attorney of the United States for the district aforesaid, to examine such witnesses as may be produced before him, and to reduce their testimony to writing, and to take and receive such evidence as may be offered in said cause, and report the same to this court with all convenient speed; and it appearing to the court that special cause therefor exists by consent of the respective counsel of the parties herein, it is ordered and decreed that the time allowed by the rules for the taking of testimony herein, be enlarged to embrace a period of six months after the cause was at issue.

Done and ordered this 1st day of July, A. D. 1903.

JAMES W. LOCKE, *Judge.*

(The foregoing has the following indorsement:) "# 210. Pg. 225. L. 1. District Court of U. S., So. Dist. of Florida. Theodore Dalcour et al. vs. United States. Order appointing master and extending time to take testimony. Filed July 1, 1903. E. O. Locke, clerk, by E. D. Dodge, deputy clerk."

142 *Stipulation of counsel.*

District Court of the United States, Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
UNITED STATES OF AMERICA.

It is stipulated and agreed by and on behalf of the United States of America, the defendant in the above-entitled suit, by Joseph N. Stripling, esq., United States district attorney, thereto authorized by the honorable Attorney-General of the United States, and by and on behalf of the petitioners in said suit by W. W. Dewhurst, their attorney of record, as follows:

That a duly certified copy of any portion or portions relevant to the issues in the above-entitled case of a document on file in the State Department of the Government of the United States, entitled "Copia

integra del espediente formado en virtude Real Orden de 29 abril, 1822, que manda se remita á S. M. una rason circunstanciada de las donaciones de tierras en las Floridas de que haya calencia en,etc., Intendencia," and received by the Government of the United States through its consul at Havana, from the Government of Spain, on the 18th day of July, A. D. 1893, may be used as evidence in said above-entitled cause without objection on the part of either party to said suit, on the ground that the same is but an extract or part of said report and not a copy of the entire document furnished by the Government of Spain to the Government of the United States.

It is further stipulated and agreed that either party to this suit shall be at liberty to use as evidence in said suit any part or parts, relevant to the issues in this suit, of the record in the case of Collin Mitchel et al. v. the United States (9 Peters, 71), the translations of the exhibits in the Spanish language filed in said cause to have the same force and effect as the same would have if proved in the above-entitled suit; and the petitioners in this suit shall be at liberty to use as evidence herein the
143 translation of the Exhibit D D in said suit of Colin Mitchel vs. the United States, beginning on page 410 of the record in said Mitchel case, or such parts thereof as are by counsel for the petitioners deemed relevant to have the same and no other effect as if the original document withdrawn from the files of said Mitchel suit by stipulation of counsel therein was produced by the United States in response to the notice served on the district attorney of the United States on the 25th day of August, A. D. 1903.

J. N. STRIPLING,
United States Attorney, Southern District of Florida.
W. W. DEWHURST,
Attorney for Petitioners.

Approved.
HENRY M. HOYT,
Solicitor-General.

(The foregoing has the following indorsement:) "# 210, Pg. 225, L. 1, District Court of the United States, Southern District of Florida. Dalcour et al. vs. United States. Stipulation of counsel. Filed Nov. 11, 1903. E. O. Locke, clerk. By E. D. Dodge, deputy clerk."

144 (From the minutes of the District Court of the United States for the Southern District of Florida, stated term, Thursday, December 31st, 1903, page 75.)

Present: Honorable James W. Locke, judge, the marshal, clerk, crier, and bailiffs in attendance. Ordered, that court be opened.

Whereupon court is opened by due proclamation.

* * * * * * *

THEODORE DALCOUR ET AL.)
vs.)
THE UNITED STATES.)

On motion of the U. S. attorney, A. M. McMillan is allowed to withdraw original exhibits used before the master, certified copies being substituted. (See Order book.)

* * * * * * *

Ordered, that court adjourn until Saturday, January 2nd, 1904.
Whereupon court is adjourned as ordered.
Attest: E. O. LOCKE, *Clerk.*

145 *Report of special master.*

In United States District Court, Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES.

Report of the master in the above-entitled cause.

To the Honorable J. W. LOCKE, *Judge of said Court:*

Having been appointed by this honorable court as master in said cause, by order dated July 1st, 1903, to take and report the testimony offered in said cause, I have the honor to report that on Dec. 28th, 1903, due notice having been given the parties hereto, I sat as master to take testimony; and did take testimony as hereinafter set forth.

Present, R. B. Archibald, special master; W. W. Dewhurst, esq., solicitor for complainant; Joseph N. Stripling, United States district attorney, and Robert A. Howard and H. C. Lewis, esq., United States special assistant attorneys.

Complainant's solicitor offered in evidence a certified copy of the portion of the records of the board of land commissioners, appointed for ascertaining titles to land within the Territory of Florida under the act of Congress May 8th, 1822, relating to the grant to John Forbes and Company, duly certified under the hand and seal of the United States surveyor-general of Florida; the document being in the Spanish language. Filed in evidence and marked "Exhibit A," with these objections:

Defendant objects to the introduction of this paper, marked "Exhibit A," as testimony:

I. That the paper does not contain a finding of facts reported as proven by the board of commissioners; the paper is not the evidence offered before the board and remaining of record.

II. That the evidence made competent by the 7th section of the act of June 22nd, 1860, is competent only at the examination before
146 the commissioners provided for in the 1st and 2nd sections of the act and not in a suit in a court of chancery under the provisions of the 11th section of the act.

III. That the memorandum of the papers set out in the report is not evidence of the execution and authenticity of said papers; that if said papers so claimed to have been presented to the said commissioners could be used in this suit, the only competent evidence would be the papers themselves.

IV. Because the paper offered in evidence is not certified to by an officer having authority to do so.

Solicitor for complainants offered in evidence a certified copy of the opinion of Samuel R. Overton, Joseph M. White, and Craven P. Luckett, the board of commissioners appointed to ascertain titles to lands in

Florida; from the records of said board and also such parts of the records of said board as relate to the claim of John Forbes and Company to the tract of land sued for in this case, certified by the surveyor-general of Florida under his hand and private seal—the same being in the English language. Same objections as to previously filed paper, marked "Exhibit A." Said second paper filed in evidence and marked "Exhibit B."

It is agreed by counsel for the respective parties hereto that copies may be made and filed from the American State Papers of such parts or portions of said State Papers as the solicitors for complainants may desire without offering the entire volume in evidence; the same to have the same force and effect as if the whole volume were to be introduced.

Complainants' solicitor offered such portions of the documents entitled Documents, Legislative and Executive, of the Congress of the United States in relation to the public lands from the first session of the First Congress to the first session of the Twenty-third Congress—from
147 March 4th, 1789, to June 15th, 1834—selected and edited under the authority of the Senate of the United States, by Walter Lowrie, Secretary of the Senate, and printed by Duff Green, Washington, 1834, as set out by the letter of the Secretary of the Treasury, dated Feb. 21st, 1825, to the Speaker of the House of Representatives, transmitting reports of the commissioners of land claims in Florida; the report of the commissioners of land claims in West Florida, dated Nov. 12th, 1824, on page 83 of volume 4, Duff Green's edition, and page 155, G. & S. edition, and also from said volume, beginning at page 94, Duff Green edition, and 169 G. & S. edition the report of said commissioners No. 2, upon the claim of John Forbes and Company to the lands sued for in this petition, and described in the title to said report, beginning at the ninth line of said report, which is introduced by eight lines, reading as follows:

"No. 2. A report of a claim of John Forbes and Company to a tract of land west of the Apalachicola River, in the District of West Florida, by title emanating from the Spanish Government, with an abstract of the evidence reported in conformity to the provisions of the act of Congress approved May 8th, 1822, entitled 'An act for ascertaining claims and titles to lands within the territories of Florida' by the undersigned commissioners, to wit, the claim of John Forbes and Company, the identical language being on page 3 et sequiter and the report of the commissioners on page one of Exhibit B."

The report of the American State Papers is not set forth at length by the special master for the reason that it would unnecessarily repeat the contents of "Exhibit B." State Papers to be marked "Exhibit C." The report certified by the surveyor-general and filed as "Exhibit B" is the same report as printed in said State Papers.

The solicitors for defendant object on the same grounds as to the introduction of Exhibits A and B, and the further objection that this report does not appear to be a complete transcript of the original grant and proceedings before the said commissioners.

148 Complainant offered in evidence a certified copy of township maps according to the United States public surveys of townships one (1) and two (2) north, of range 7 west, and township two (2) north, of range 8 west, showing location, according to public surveys of Sweetwater Creek. Filed in evidence as "Exhibit D."

Defendant's solicitors objected on the ground that said evidence is immaterial and irrelevant and for the reasons stated in former objections.

Solicitor for petitioners offered in evidence a certified copy, furnished by the State Department, of a note from the Spanish secretary of state to the minister of the United States inclosing a translation of an order of the department of state to the captain-general of the island of Cuba, directing that information be furnished the United States relative to grants by the Spanish Government in Florida. Filed in evidence and marked "Exhibit E."

Counsel for petitioners offered in evidence a certified copy from the Department of State of parts of a certain document purporting to have been received by the consul of the United States and commissioners to demand and receive the Florida archives from the captain-general of the island of Cuba, July 18th, 1835. Filed in evidence as "Exhibit F."

Complainant offered in evidence a translation of "Exhibit F." Filed in evidence as "Exhibit G."

Complainant offered in evidence certain other portions of the document from the State Department, of which Exhibit F is a part. Filed and marked "Exhibit H." Exhibits F, G, and H, objected to by defendant's solicitors on the ground that they are incompetent, the originals or certified copies being the best evidence.

Complainant offered in evidence a certified copy from the State Department of a letter addressed to James Ringold, esq., dated April 28th, 1829, filed in evidence and marked "Exhibit I."

149 Complainant offered in evidence an extract from volume 6, American State Papers, G. & S. edition, page 502, translation of a letter from Francisco Tacon to Mr. Van Buren, Secretary of State, dated October 24th, 1829, which reads:

"[Translation.]

"*Mr. Tacon to Mr. Van Buren.*

"SIR: The colonel of infantry in the armies of my August Sovereign, Don Manuel Garcia Muñiz, now a resident of New Orleans, has informed me, under date of the 14th of September last, that by decree of the President of this Union, of the 13th June and 16th July of the present year, orders had been issued to offer for sale, at public vendue, certain lands in Florida, as property of the United States, which comprehend a tract of fifteen thousand acres belonging to the colonel above named, and situated within the jurisdiction of St. Helena, New Felicina, within the district of Baton Rouge; and that he had been obliged to enter the protest contained in the document hereunto annexed.

"This important innovation which would seem to affect many other individuals in the same situation with the claimant places me under the necessity of calling the attention of the President to the serious injury which will accrue from the above-mentioned decree to the vassels of the King, my master, and other proprietors of land granted by the legitimate authorities of His Majesty, as set forth in detail in the statement which I had the honor of addressing to you on the 11th of April of this year. In order that His Excellency may have the goodness to take into his consideration a subject of so much importance, and to take such measures as he

may think proper to cause said grants to be respected, according to the stipulations of the 8th article of the treaty of the 22nd of February, 1819.

"I avail myself of this opportunity to offer to you the assurance of my distinguished consideration.

"God preserve you many years.

(Signed) "FRANCISCO TACON.

"PHILADELPHIA, *24th October, 1829.*"

150 Filed in evidence and marked "Exhibit J."

Defendant objects to the introduction of "Exhibit J," for the same reason that objection was made to the introduction of volume 4 of American State Papers.

Complainant offered in evidence certain extracts from the printed record of the case of Colin Mitchell vs. The United States, 9th Peters, page 711.

On page 638, 9th Peters, it reads as follows: "It is agreed by counsel in this case * * *. It is further agreed that the reports of the Spanish authorities purporting to contain a list of the titles and grants in the Floridas forwarded by the Spanish Government to the Department of State and sent to the counsel for the United States and proved in court be withdrawn, and that the translation of so much thereof as relates to the title in the above case, marked "Exhibit D," filed 22d July, 1830, be substituted to have the same effect as if the original was copied in the record.

Complai'ant offered in evidence certain extracts from a paper marked "DD," an exhibit in the case of Mitchell vs. The United States. Said extracts filed in evidence and marked "Exhibit K."

Objected to on same grounds as offered to the introduction of extracts from the expediente. ("Exhibit F.")

Complainant offered in evidence extracts from the Annual Reports for 1902 and 1903 of the Commissioner of the General Land Office. Report of 1902, pages 171–2, Calhoun County, area unappropriated and unreserved surveyed, 63,074 acres; area reserved, 2,483 acres; area appropriated, 647,953; total area of land surface of the county in land district, 713,510 acres. Description of character of unappropriated and unreserved land: Low pine land.

151 Washington County, area unappropriated and unreserved, 141,697 acres; area reserved, 5,958 acres; area appropriated, 772,245 acres; total area of land surface in said land district, 920,000 acres. Description of unappropriated and unreserved land: Low pine land.

Report for the year 1903, pages 74 and 75.

Calhoun County, area unappropriated and unreserved, 58,595 acres; total, 58,595 acres; area reserved, 2,483 acres; area appropriated, 652,422 acres.

Washington County, area unappropriated and unreserved, 129,460 acres; total, 129,460 acres; area reserved, 5,958 acres; area appropriated, 784,582 acres.

Complainant offered in evidence a sectional map of the western part of Florida, showing location of the Apalachicola and Choctawhatchie rivers

and Sweet Water Creek, Gulf of Mexico, bays and islands and the counties of Calhoun and Washington. Filed in evidence and marked "Exhibit L."

Objected to by defendant as immaterial and irrelevant.

WEDNESDAY, *December 30th, 1903.*

Present, R. B. Archibald, special master; W. W. Dewhurst, counsel for complainant, and J. N. Stripling, United States attorney, and Robert A. Howard and H. C. Lewis, United States special assistant attorneys.

It is stipulated by counsel for both parties that the United States land surveys were extended over the lands mentioned in the petition by the designation of the United States land surveys, and that the lands shown by the reports of the Commissioners of the General Land Office as disposed of have been disposed of under the United States land laws.

Complainant offered in evidence an affidavit of W. W. Dewhurst, with letters attached, marked "Exhibit M."

152 Complainant, to make proof of the translation of the extract from the document on file in the State Department of the United States under a Spanish title, which, in English, is as follows: "Complete copy of the 'expediente,' made by royal order April 29th, 1822, which commanded that a minute account of the donations of land made in the Floridas and recorded under this administration be forwarded to His Majesty, marked 'Exhibit F,'" introduced as a witness Mr. S. E. Carreras, who, having been duly sworn, deposes and says:

My name is S. E. Carreras; age, [illegible] years; occupation, Spanish and Uraguayan consul at Jacksonville, Florida; my native language is Spanish; I am familiar with the translation of Spanish into English.

Exhibit F being handed to witness, he says that had compared it with original Exhibit G, also handed witness; witness says that Exhibit G is a true and correct translation of Exhibit F.

Witness was handed certain other documents marked "Exhibit F," No. 2. Upon examining the same witness says the Spanish appearing in said document F, No. 2, was compared by me with the document bearing the stamp of the State Department, which was present and before the special master, and they are true and correct copies of the pages of said document, and that the translations following the Spanish portions are true and correct translations.

Witness was asked if he had examined the document on file in the State Department, the title of which is given in the certificate of the Secretary of State to "Exhibit F," and he stated that the character of said document is as follows:

"That is a record of the grants made by Spain in the territories of Florida. It contains 371 double pages, and is signed by the intendente of the island of Cuba."

Complainants announce that they rest.

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THE UNITED STATES.

A. M. MCMILLAN, being duly sworn as a witness for the defendant, says: My name is A. M. McMillan; I reside at Pensacola, Florida.

I am clerk of the Circuit Court of Escambia County, Florida. As such clerk I am the custodian, and have in my possession the records, papers, and files of the Territorial Superior Court of West Florida; I also have, as such custodian, in my possession, records, papers, and files of a certain suit in the Territorial Superior Court of West Florida, in the case of John and James Innerarity and the heirs of John Forbes vs. The United States.

Witness handed record book and says: It is the record of the proceedings of the Superior Court of West Florida.

This book contains proceedings of the cases heard and determined in the Superior Court of West Florida, which proceedings are regularly signed from day to day by the judge of that court.

Q. You will please refer to this book and read what record entries you find therein in the case of John and James Innerarity and the heirs of John Forbes against the United States.

Ans. Witness read original entries from the record book, which were offered and read in evidence.

Q. Does the paper you now hold in your hand contain a correct copy of the journal docket entries which you have just read?

A. It does.

154 Q. You will please state whether the paper I hand you is a copy of the entry from the record book, which you have just read, made, and compared by you.

A. It is a copy.

(The defendant now offers its original copy of the original entry from the journal book and asks that it be substituted for the original entry and marked "Defendant's Exhibit I.")

Q. Upon page 510 of that record book is there an entry in the case of John and James Innerarity and the heirs of John Forbes against the United States?

A. There is.

Q. What does that purport to be?

A. It is a decree in the case.

Q. Are the two papers which I hand you a part of the files and records in the case of John and James Innerarity and the heirs of John Forbes against the United States?

A. They are.

Q. What are they?

A. A petition and amended petition.

(Said papers were offered and read in evidence. Complainants' solicitor objects to the foregoing evidence, including all taken from the journal of the court, on the ground that upon the issues in this case the same is immaterial and irrelevant.)

Q. I hand you the answer in the case now on hearing, Theodore Dalcour et al. vs. The United States, and ask you to examine "Exhibit A" and state whether you made and prepared the same, and whether it is a copy of the amended petition filed in the case of John and James Innerarity and the heirs of John Forbes in the Superior Court of West Florida?

A. Yes, sir.

155 (Same objection as above by solicitor for complainants.)

Q. Will you please state whether the paper I now hand you is among the original files of record in your custody in the case of John and James Innerarity and the heirs of John Forbes vs. the United States, heard and determined in the Western District of Florida? (Witness here handed paper indorsed "Answer.")

A. It is.

(Objected to by complainants' solicitor on same grounds as above mentioned.)

(Said paper was read in evidence.)

Q. Please look at "Exhibit B," to the answer on file in the present case, the case before the master, and state whether that is a copy of paper last read, made, and compared by you in the original suit of John and James Innerarity and the heirs of John Forbes v. the United States in the Superior Court of West Florida?

A. It is a copy made and compared by me and duly certified under my seal of office.

Q. Please turn to page 510 of the record book, which is, as you stated, the decree that was entered in the case of John and James Innerarity and the heirs of John Forbes against the United States, and state whether that decree is entered at large in said record book.

A. It is.

Q. And signed by the judge of the court?

A. Yes, sir.

(Defendant offers decree in evidence on page 510.)

(Solicitor for complainants object on the same ground as stated heretofore to petition and answer.)

(Said decree was read in evidence.)

156 Q. You will please look at "Exhibit C" to the answer on file in the case before the master (Dalcour et al. vs. The United States) and state whether the same is a copy of that opinion and decree just offered and read in evidence in the case of John and James Innerarity and the heirs of John Forbes vs. United States.

A. It is a copy made and compared by me and certified under my hand and seal of office.

Q. I ask you to examine the book now handed you and state whether it is in your custody as custodian of the records of the Superior Court of West Florida, and what that book is.

A. It is a record of pleas heard before the Superior Court of West Florida.

Q. Commencing on page 145 and extending to page 147 you will find a petition of John and James Innerarity in the case of Innerarity and the heirs of John Forbes vs. the United States; will you please read from page 146 the application for a subpœna to R. K. Call to produce the original grant in this case?

(Witness read the above entry from page 146.)

Q. I offer from the original the entry from the petition of James and John Innerarity and the order of the court in pursuance thereof, and I present this paper and ask the witness, is that a correct copy of the original from which you have just read to the court?

A. It is a correct copy.

(Question and answer and the evidence offered, objected to on the ground that the evidence appears to be a part of *of* the record and not the entire record, and the entire record appears to be entered in the docket, or minute book, from which witness read.)

157 I now ask leave to substitute copies testified to by witness.

(Substituted copies filed in evidence and marked "Exhibit 2.")

Q. I now hand you a paper and ask you if it is a part of the files and records in the case of John and James Innerarity and the heirs of John Forbes against the United States for the Superior Court of West Florida in 1831, in the case about which you have been testifying?

A. It is.

Q. Is that paper indorsed upon the back?

A. Yes, sir. Exhibit A. La casa de Forbes y Companie 1819.

(Defendant asks leave to file a verified copy of this, marked "Exhibit No. 3.")

Q. This paper is in Spanish?

A. Yes, sir.

I now offer this original in evidence.

Objected to by complainant's counsel upon the following grounds:

In so far as it is an attempt to show that these papers constituted the original grant, that it is not authentically shown that they came from the Spanish authorities; that it appears that they do not come from the proper place of custody; that it appears that they do come from a person who has not the legal custody of such papers, or, in other words, that the person producing them is not the lawful custodian; that the records of the trial of John and James Innerarity and the heirs of John Forbes against the United States shows that the papers were produced to the court with certain alterations appearing therein; no evidence was offered to explain those alterations. (This ground of objection is only

158 made upon the theory that the Government repudiates the presumption that the alterations were made at the execution of the documents, or were legally made by authority.) That this trial is had and this case is to be decided according to the principles of the Spanish laws in force when the Spanish grant was made, and by that law the registro, or original title papers, could not be used in a court of law as evidence, but an exemplified copy, furnished by an authorized official, of this registro called "the original" was the only competent evidence of a grant authorized to be used in courts, as evidence of the official action of the King of Spain and his lawful authorities.

Because there appears to a variation between the registro, as produced, and the original exemplified copy in the hands of the claimants, and this being the case, the registro ought to be in the custody of the keeper of the Spanish archives, and the original exemplified copy should be referred to the notary or official who made the exemplified copy to determine the correctness of the copy by comparison with the registro, and if the notary be dead, then to his successor in office, or other authorized official of the King of Spain, that he may explain the variation appearing between the registro and the exemplified copy furnished as the original or notarial copy.

Because the registro, at certain places, has two dates while the original exemplified copy has only one, the earlier dates, and the lawful keeper

of the registro by the Spanish law is the sole exclusive judge of the correctness of the exemplified original, or notarial copy, which in this case follows the copy of the registro as amended, or corrected, and no testimony of this character has been offered to explain the differences
159 existing between the registro and the exemplified copy, or original, furnished by the notary.

Because under the laws governing this class of evidence the proper foundation has not been laid for the introduction of the registro in evidence, it not having been shown that the notary making the original denies having made it or in anywise impeaches its correctness; nor has the correctness of the original been in any authorized manner impeached or shown to be fraudulent or incorrect.

Because the original is a true and correct exemplification of the registro, and, until the contrary is admitted to be the fact, the registro is not authorized to be used as evidence and the court is not authorized to enter a comparison of the registro with the original exemplified copy.

Because the registro as corrected, and the exemplification originally filed before the board of land commissioners agree in every particular, and therefore there exist no errors or falsities in the original exemplified copy, and there is no occasion for the use of the registro and no authority of law for its use in any court as evidence of the grant made by Cien Fuegos, captain-general of Cuba.

Because under the law which governs the trial of this suit the mere alteration of the dates of the registro by substituting an earlier date therein, whether done by lawful authorities of the King of Spain or by some unauthorized person, does not impeach the exemplified original following the registro as altered, and there is no ground for the presentation of the registro before the court and no authority for the court to investigate and determine the validity of the alterations of the registro, and—

Because the necessary evidence upon which to determine the question can not now be furnished the court.

160 Q. Mr. McMillan, will you please turn to page 207 and read from page 207 to the passage marked "memorandum"?

(Objected to, upon the ground that this evidence is only a part of the record; that the whole record is not introduced.)

Witness then read memorandum from page 207.

(Paper handed witness.)

Q. Will you please look at this paper which I now hand you? Is this a correct copy of the memorandum which you have just read from the original?

A. It is a correct copy.

I now offer this copy as a substitute for the original, marked "Exhibit 4."

(Objected to by complainant's counsel, upon the ground that it is only a part of the record and not the entire record.)

Q. Mr. McMillan, will you please turn to page 496 of the same record? Please read the entry in the same case.

(Original offered in evidence.)

I ask you now, Mr. McMillan, whether this is a copy of the record which you have just read?

(Witness handed paper.)

A. It is a correct copy.

(Objected to, upon same grounds as above.)

I now offer this paper as a substitute for the original, marked "Exhibit 5."

Cross-examination by W. W. DUWHURST, Esq.:

Q. In your direct examination you stated that you were the custodian of these records which you have introduced. State if you exercised such custody by other authority than your commission as clerk of Escambia County Circuit Court.

161 A. No, sir; none except that which I received from my predecessor in office.

Q. How many predecessors in office had you between 1830 and the time you took office?

A. I could not say positively.

Q. Have there been a considerable number of predecessors?

A. Possible three or four.

Q. Do you know of your own knowledge that there have been three or four?

A. With the exception of one year, my predecessor, Mr. LaRua, and his father, I think, held office nearly fifty years.

Q. During the war between 1860 and 1865, was not Pensacola in possession of forces hostile to the United States?

A. I think so.

Q. When you took possession of the office, in what condition did you find the records and files?

A. The court records—case papers—were all there, but not filed systematically—that is, indexed so that you could locate them easily.

Q. Were they or not carefully kept together, or were they scattered?

A. I think the records were all kept very carefully, but not systematically.

Q. Was lack of system such as to have rendered it probable that records of different proceedings should become commingled?

A. It is possible.

162 Q. What action did you take with reference to the records after you assumed office?

A. I rearranged all the records from 1822 up to date.

Q. And what did you do?

A. Filed and indexed them so as to locate them easily.

Q. And did you place them under separate covers?

A. I did.

Q. Do you recall these particular papers as placing them under cover?

A. No, I do not; that was done by my deputy.

Q. Is it not a fact that all the papers in your office are open to examination and inspection by various attorneys practicing at Pensacola?

A. Not at this time, except under the supervision of the clerk. Previous to the introduction of this system of filing the papers were in the vault, open for inspection of attorneys at their own free will.

Q. Please examine page 513 of the record book, from which you have read, and state whether or not there appears to have been any alteration or interlineation in that record.

A. It appears to be somewhat rubbed out—erased.
Q. Is the alteration in the same colored ink as the original?
A. The ink is blacker than the original.
Q. Do you know who made the alteration?
A. I do not.
Q. Do you know when it was made?
A. I do not.

Q. Can you decipher the words that have been obliterated?

163 No, I could not say positively. It looks like "rendered" and inserted above it "renders." To the best of my knowledge it is "rendered."

Q. Can you state positively what the obliterated word is?
A. No; I will not say positively. I can not quite make it out.
Q. That alteration appears in the decree entered in the case?
A. I think it does.

ROBERT A. HOWARD, a witness on behalf of the defendant, being duly sworn, testifies as follows:

Q. Are you connected with the Department of Justice?
A. I am special assistant of the Attorney-General in such cases as he may designate.
Q. Please examine this paper I now hand you and state if you know where it comes from, and everything in detail concerning it within your knowledge.
A. I obtained this paper by having called for it in my official capacity from the clerk of files and records in the Department of Justice.

(The admission of this paper in evidence objected to, because there is no proof of handwriting of the person purporting to have signed it; because the person is long since dead and can not be produced as a witness, and because the paper writing undertakes to give testimony, and states what he did and what was done and is not under the sanction of an oath, and because the document is of a character entirely incompetent as evidence in a court of justice.

Said paper was read in evidence and marked defendant's "Exhibit No. 6.")

164 SIMON E. CARERAS called on behalf of the defendant:

Being first duly sworn, Simon E. Carreras deposes and says as follows:

Q. Mr. Carrara, you have already testified that you are the Spanish consul here. You are familiar with official Spanish and American papers?
A. Yes, sir.
Q. You will please look at this paper which I hand you, which has been introduced in evidence, marked "Exhibit 3," and state what that paper is.
A. This paper appears to be a petition addressed to the captain-general of the Cuban Islands and both Floridas from the firm of Forbes & Company, in which they ask some compensation from the Spanish Government for some losses.
Q. Is this an original paper?
A. It appears to be the original paper.

Q. In the form and marks bearing all of the original?
A. It appears to be with some exceptions.
Q. Is this paper in the form of a Spanish grant for lands?
A. It seems to be.
Q. The first contains the petition?
A. Yes; the first contains the petition.
Q. Then the references to the proper officers?
A. Reference to the proper officers.
Q. And apparently a decree being the grant of the land?
A. Yes, sir.
Q. You will please state whether this paper appears to be the original, or whether there are apparently changes and alterations made in it?
165 A. It appears to be the original, though some alterations have been made in the dates.
Q. Referring to the first eight pages of this document, please state what they purport to be.
A. They purport to be a petition from the firm of John Forbes & Company addressed to the captain-general, asking some compensation for losses.
Q. Referring to the eighth page of this document, state what it is. As I understand you, it is an order of the captain-general referring the petition of John Forbes & Company to the notaries.
A. Yes, sir.
Q. What dating does that bear?
A. January 5th, 1818.
Q. Referring to entry at page 8, please translate it into English.
A. This entry translated into English reads as follows: "January 7th of 1818. Taxes paid, 10 reals. Let this order be complied with." Signed by three notaries.
Q. Now, does there appear to be any alteration in the dates of those entries?
A. Yes, sir.
Q. Now explain that fully.
A. It appears to be before the date was changed (translated into English) reads: "February 14th, 1818."
Q. Please state in what manner the date appears to have been changed.
A. The alterations appear to have been made by writing the word "January" (in Spanish) over the word "February"—"Fev."
Q. What does that "Fev." mean in Spanish?
A. It means February.
Q. Is that the full word for February, or just an abbreviation?
166 A. No, sir; the abbreviation.
Q. And the attempt to make it what?
A. The attempt is to change it into "en."
(Objected to on the ground of form of question, asking the witness as to an attempt to change the document.)
Q. What does "en" mean?
A. "En" means abbreviation for January.
Q. Which would make it appear January 7th, instead of Feb. 14th?
A. Yes. The figure seven has been made over the original one. Next to this figure has been erased another one, which it appears to be a figure 4.

Q. State what is the character of the inks.

A. The ink used to make the alterations is of a lighter color than that used in the document.

Q. Do you find upon this document presented to you any other evidences of changes or alterations from the original? If so, please state.

A. Yes, sir; on the same page (9) the words "fourteenth of February" appear to be erased and over them has been written "seventh of January." On the 19th page there is another alteration which reads "Havana, January the 10th, 1818," written over the words "February twentieth," 1818. Page 27 appears to be written by other parties than pages 26 and 29, with which it is connected. The ink used for this page 27 is of a lighter color than that used in the whole document. The paper used seems to be different than the one used in the body of the document. On page 39, written over the word "March," appears the word "January," written with ink of a lighter color than the body of the document. At the bottom of page 29 and above the signature of the notary is written, in different characters and lighter ink, the following words, betwe'n lines: The tenth corrected "January. Good." That is all the
167 alterations I see in the document handed me by the defendant.

Q. Is there to that instrument any salvado before the signature to show that the alterations have been made?

A. No; except on the last page, and this regarding the January, which refers to the word "January" written over "March."

Q. That salvado related to what?

A. It relates to the testimony written on pages 26, 27, 28, and 29.

(Question objected to on the ground that the document itself is the best evidence and that it is the mere opinion of the witness.)

Q. Have you made a copy of that paper before you?

A. Not yet, sir.

Q. You are making it?

A. I am making one.

DEFENDANT'S COUNSEL. I will ask leave, when the copy which the witness has in preparation is completed, to have it substituted for the original grant and marked "Exhibit 3A."

(Adjourned until next Thursday morning at ten o'clock.)

168 In the District Court of the United States for the Southern District of Florida.

THEODORE DALCOUR ET AIS.
vs.
UNITED STATES.

Hearing resumed this 31st day of December, A. D. 1903.

Present: Honorable R. B. Archibald, special master, and counsel for the respective parties.

Cross-examination by counsel for complainant of defendant's witness, E. Carreras:

Q. State whether as Spanish consul or otherwise you had opportunity to examine and pass upon official papers emanating from any of the higher Spanish officials?

A. Yes, sir.

Q. Are you familiar with the practice of such officials in passing upon official papers and how they indicate their approval or disapproval?

A. Papers of the present day I am, but not of ancient papers.

Q. Have you had exhibited to you title papers to land emanating from the higher Spanish officials heretofore?

A. No, sir.

Q. Then this paper, defendant's Exhibit No. 3, is the first document relating to a grant of land that you have ever examined?

169 A. Yes, sir; the first.

Q. In official papers, such as I have described, is it customary to note approval of the several officials who pass upon the papers by anything besides a signature of the official?

A. It is customary to note such approval by a flourish following his signature.

Q. What is the Spanish word that describes the entire record of a grant of land beginning with the petition, including the grant, and ending with the order putting the party in possession?

A. "Expediente."

Q. You testified in your direct examination that the documents, Exhibit No. 3, were the original title papers?

A. It appears to be.

Q. Is this document, Exhibit No. 3, the expediente of a grant to John Forbes and Company?

A. Yes; it is.

Q. Turning to the first page of the document explain the printed words at the top of the page.

A. It is the official seal of the Spanish Government at that time.

Q. On the left-hand side, what is that seal?

A. That is the seal of the King Ferdinando Seventh.

Q. What does that seal upon the paper indicate?

A. That the paper is official.

170 Q. Can that paper be used by any other persons than the officials of the Spanish Government or by their authority?

A. Not that I know.

Q. Have you ever seen in your experience paper bearing the King's stamp used by any other person except the lawful authorities of the Spanish Government or some person by their consent?

A. No, sir.

Q. Examining again page one, state how many flourishes appear at the top of the page?

A. Four flourishes.

Q. Explain what those flourishes mean?

A. They mean the rubric that follows the signature of the Spanish official who sign the document or otherwise.

Q. Examining the first of those flourishes, is that the flourish of any party who signed that document?

A. No, sir; not the first.

Q. How then do you account for the first flourish?

A. I could not say.

Q. Does not that mean that some other official of the Spanish Government besides the parties who signed the document has inspected and passed upon the document?

A. I suppose so.

Q. State upon what you base that supposition, your knowledge
171 of such cases. Have you had such experience with Spanish documents as to enable you to state on what you base this supposition?

A. I have no experience on this particular question.

(Colonel Howard, of counsel for defendant, objected upon the ground that it was not competent cross-examination.)

Q. Taking the other three flourishes that appear on the top of this paper, are they the flourishes of parties who signed the document?

A. The second appears to be the same flourish of Ramirez; the third I find in the body of the document; the fourth is similar to the rubric of Migl. Mendez.

Q. All the papers comprising this expediente are attached together, are they?

A. Yes, sir.

Q. And all form one document?

A. Yes, sir.

Q. Are the pages numbered?

A. No.

Q. Counting the pages and each side of the leaf, upon page seven, what ends page seven?

A. The name of the petitioners.

Q. And anything else?

A. And their rubric.

Q. What are the names, then?

172 A. Don Pedro Anto de Ayala; the other, Juan Forbes.

Q. How many double sheets of paper are embraced in these eight pages?

A. I can not answer that question, as I find the sheets to be abraded by handling and age.

Q. To the end of page seven, do you find any irregularities or alterations in the paper?

A. There doesn't appear to be any.

Q. What appears upon the back of page seven, beginning with the first?

A. It is an order to the assessor-general.

Q. Who makes that order to the assessor-general?

A. By Ciefnuego.

Q. Who was Cienfuego?

A. The captain-general.

Q. Has it also another signature?

A. Yes; Migl. Mendez.

Q. Who was Migl. Mendez?

A. An escrebano, or notary.

Q. That order bears what date?

A. January 5th, 1818.

Q. Has that date been altered?

A. It does not appear to be.

173 Q. Then including the order to the assessor-general and the petition, both appear to be intact and perfect?

A. Yes, sir.

Q. What is the next endorsement on the back of page seven?

A. A certificate from the Escrebano Mendez that he made this order known to Juan Forbes.

Q. Is that in proper form?

A. I think so.

Q. What is the next order on the back of page seven?

A. This is an order that the information which the firm of Forbes and Company request be received by the Escrebano Mendez.

Q. Who is that signed by?

A. Signed by Cienfuego Del Monte and Migl. Mendez.

Q. Is that order complete without alteration?

A. Yes; it appears to be.

Q. What is the next endorsement on the back of page seven?

A. A certificate from the escribano to the effect that he communicated said order to Don Juan Forbes.

Q. Does this page seven bear the King's stamp and also the four rubrics of the various officers?

A. Yes, it bears the four rubrics.

Q. Is that proof that it is a genuine original document?

A. Yes.

174 Q. What is the order that begins page nine of the document?

A. The order is that the foregoing order be accomplished according to law.

Q. Who signs that order?

A. Ramirez, Campusano, Migl Mendez. At the margin of the page appears the signature of another man, P. M., to the effect that the taxes were paid.

Q. In your direct testimony you testified that page eight was an order to the notary. Was that correct?

A. There were two orders on this page, one to the assessor-general and one to the notary.

Q. Continuing further on page nine and following the order of Ramirez, Campusano, and Mendez, what is the paper writing on that page?

A. It is the beginning of taking of testimony under the foregoing orders by the escribano, Mendez.

Q. Is it written on the same page with the order of the Spanish official named immediately following?

A. Yes, sir.

Q. How many pages are occupied by the testimony taken by the notary?

A. Part of one page, nine full pages, and part of the eleventh page.

Q. Who was the last witness?

A. Franco de Pla Morales and followed by the notary's signature and flourish.

175 Q. What on this page follows the completion of the testimony as written on this page?

A. It is the order from General Cienfuegos that the grant be made to the petitioners.

Q. How many pages does that occupy?

A. It occupies three full pages, part of one at the beginning and part of one at the end.

Q. What is the endorsement made on the last page occupied by the grant?

A. This is a certificate of the notary that he communicated the said order to Don Colin Michel. Through this name a line crosses it and over this name is written Juan Forbes.

Q. Does this certificate that you have just testified to end all that appears on that page?

A. Yes.

Q. And is the reverse of that page blank?

A. Yes.

Q. Does it contain the King's seal and the rubrics and the official stamp of paper upon the reverse of this page?

A. Yes.

Q. What begins the next page following the grant?

A. It is a petition from the firm of John Forbes and Company signed by their representative, Colin Michel, requesting that two authenticated copies be given to them of the orginal act or dispatch which Joseph Masot, the civil and military commander of the Province of Florida, did dispatch in consequence of one sent to him by the superior gov-
176 ernment upon the indemnification of damages claimed by the petitioners.

Q. What is the Spanish word that you have translated as the second "dispatch?"

A. Le libro.

Q. What is the English translation of le libro?

A. Did dispatch, or gave.

Q. Does that petition cover all the page?

A. One page; yes.

Q. In the right-hand margin of this page what order is made?

A. Let this be carried to the assessor. Signed, General Cienfuegos.

Q. On the back of the page, what is the first order appearing on the top of the page?

A. It is an order from the Spanish general that the two copies be furnished to the house of Forbes and Company.

Q. Is the endorsement on it in reference to the payment of a tax?

A. Yes.

Q. What is the next order on the back of the page?

A. It is a certificate from the escribano that he communicated the foregoing order to Don Colin Michel.

Q. The two orders last referred to, how much of the page do they occupy?

A. One-half the page.

177 Q. What follows on the lower half of this page?

A. It is the beginning of a copy of an order fro[illegible] Colonel Masot, civil and military commandant of the Province of Fl[illegible]te., putting in possession of the firm of Juan Forbes and Compan[illegible] the land requested.

Q. Please examine the paper and see if it is the land requested or the land granted by the superior decree of the captain-general.

A. Of the land granted by the superior decree of the captain-general.

Q. In your direct examination you stated that page twenty-seven

appeared to be written by another party than who wrote pages twenty-six and twenty-nine with which it is connected, and that the ink used on page twenty seven was lighter in color, etc.; please examine pages twenty-six and twenty-seven, and state wherein the writing in its characters on page twenty-seven differs from the writing on page twenty-six.

A. The character is stronger on page twenty-seven than in page twenty-six; the "R" used in the writing of page twenty-seven, it differs in the shape of the "R" used in page twenty-six. There are many other differences in the body of page twenty-seven compared with the body of page twenty-six.

Q. What pages of this document are embraced in the copy of the order of Commandante Massot?

A. The lower half of page twenty-six, full pages twenty-seven and twenty-eight, and three-quarters of page twenty-nine.

178 Q. How is the copy of the order of the Commandante Massot certified?

A. It is certified by the Escribano Mendez as being a copy of the original order.

Q. Whereabouts does that certificate appear?

A. In the lower part of page twenty-nine.

Q. What follows that certificate, beginning on page twenty-nine and continuing on page thirty?

A. It is certificate from three other escribanos of the Royal College of Havana to the effect that Don Migl Mendez is also an ascribano or notary of His Majesty, dated Havana, December 19th of 1818.

Q. This certificate is partly on pages twenty-nine and thirty, which is the last page of the document, and all together form the expediente?

A. Yes.

Q. Does it contain anything further to verify it?

A. There is a seal bearing the Spanish court of arms, and it is the seal of the Royal College of Notaries and Escribanos of Havana.

Q. You testified in your direct examination that there was a salvado upon the document. What is the definition in English of the word salvado?

A. Corrected.

Q. What is a salvado upon an official paper?

A. It means that it is a certificate of alterations or corrections that have been made in the paper.

179 Q. What are the Spanish words appearing on this document constituting the salvado?

A. Testado, # ingenieros, sign no vale entre, # reng^{s} á dies, # em^{do} enero, # vale.

Q. In your direct examination you omitted to translate the first words testado, ingenieros; sign no vale. Please translate those words.

A. Testado means certified.

Q. Following the word testado, the words ingenieros; sign no vale mean what?

A. That the word ingenieros has been written by mistake.

Q. Following testado, are the abbreviations for the words entre renglones, are they not?

A. Yes.

Q. Do not the two words entres renglones when used upon an official document constitute what is called in English an idiom having a special signification, meaning interlineation noted?

A. Yes.

Q. Then the correct translation of the words in this document, entres renglones á dies emendo should be translated correctly, how?

A. An interlineation in the tenth line corrected.

Q. Doesn't it mean corrected to the tenth?

A. Corrected to the tenth. It means between lines to tenth corrected January, good.

Q. Then it does mean corrected in the tenth line?

180 A. No, sir.

Q. If it was translated corrected in the tenth line, such translation would be wrong?

A. Yes; upon the ground that on the tenth line of page twenty-ninth there is no correction whatever. Correction is made on the ninth line with three words. Upon the word "veinte" is written "y tres" following the word "de" and the word "enero" is written over the word "marzo." The salvado states that the word "enero" is properly inserted.

Q. In your direct testimony you say that at the bottom of page twenty-nine above the sigature of the notary in different character and in lighter ink appears the salvado?

A. Yes, sir.

Q. Have you ever translated the words entre renglones á dies em^{do} enero, vale, corrected between the lines corrected to January tenth, good?

A. Yes; but I was not presented at the time the original document.

Q. Were you presented with the words printed in type?

A. Yes.

Q. You were presented with the same words which appear in the original document, were you not?

A. I was presented with simply those words to translate them without showing the original document in which the correction is made.

Q. Examining this original document as to the color of the ink in which the word enero in the ninth and tenth line is written, with

181 the color of the ink in the last line of the salvado, state whether or not they appear to be of the same color.

A. It does appear to be of the same color.

Redirect examination by Mr. LEWIS, of counsel for the defendant:

Q. You have stated that the salvado is written with an ink of a lighter color than that in the body of the document; please refer again to the salvado and state whether the entire salvado is a different ink or only a part of it.

A. Upon examination of the document, I find that only a part of the salvado, which is the last line, is the one written with a lighter color of ink and different handwriting than the body of the document.

Q. Please state what that last line translated into English is.

(Question objected to by counsel for complainant on the ground that he has already translated it twice, once on the direct and once on the cross examination.)

A. Between lines to tenth corrected January, good.

Mr. S. E. CARRERAS recalled for defendant.

Direct examination by Colonel HOWARD, of counsel for the defendant:

Q. Examine the paper handed you and state whether you have compared it with the grant, Exhibit No. 3, heretofore testified about by you, and whether it is a correct translation thereof.

182 A. It is.

(Defendant's counsel offers paper, stating: I now offer the paper which is marked "Exhibit No. 3 A."

The same objections by complainant's counsel as were made to defendant's Exhibit No. 3.)

Cross-examination by COUNSEL FOR COMPLAINANT:

Q. This translation which you have verified as correct omits entirely the copy of the King's seal and the rubrics and the printed certificate verifying the official paper, does it not?

A. It does.

Q. It does not attempt to follow the paging?

A. No; it does not attempt to follow.

(The defendant now offers a literal copy of the original grant and the same objections are made by complainant's counsel that were made to the offer of defendant's Exhibit No. 3. It is received and marked "Exhibit No. 3 A;" and then defendant rests.)

183 In the United States District Court, Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES.

The hearing and taking of testimony being resumed on this, the 8th day of March, A. D. 1904, there being present counsel for the complainants and also for the defendant, the defendant offered in evidence a certified copy of commission dated April 3rd, 1829, from the President of the United States to R. K. Call, esq., of Florida, as commissary to the United States to receive the archives and documents which relate directly to the sovereignty and property of the provinces of East and West Florida, filed in evidence and marked "Exhibit 7."

The defendant offered in evidence certified copies of letters from R. K. Call to the Commissioner of the General Land Office, dated Washington, March 30th, 1829, Tallahassee, 28th Oct., 1829, Tallahassee, June 2nd, 1829, Havana, 18th Jan., 1830, Tallahassee, 26th July, 1829, Tallahassee, 20th March, 1830, Tallahassee, 4th Aug., 1829, Tallahassee, 3rd May, 1830, Washington, 13th March, 1831, all relating to his acts done in pursuance of his commission as shown by Exhibit No. 7.

(The above testimony (letters of R. K. Call) objected to by complainant's counsel on the ground that they are the statements of a stranger and res inter alios acts, in this suit, and as to a portion of those letters, they are the expression of a conclusion on the part of the writer and a statement of a party without the sanction of an oath and not subject to cross-examination.)

Letters of R. K. Call filed in evidence attached together and marked "Exhibit No. 8."

Defendant's counsel announced that they rested.

184 IN REBUTTAL.

Complainants in rebuttal: The defendants having offered in evidence a certain portion of the record in the trial in the Superior Court for the Western District of Florida, complainants now offer such further parts of said records of said Superior Court as are material in this case, which are all by certified copies certified to by the clerk of the court of Escambia County, who is the custodian of said records. To each one of these papers in the Spanish language so certified there is a translation into the English language and sworn to by a translator, and by agreement of counsel further pro'ff that the same are true translations is waived, as follows:

Certified copy of a letter in the Spanish language from the captain-general of Cuba to R. K. Call, dated March 4th, 1830, and a translation of the same attached, marked "Exhibit O;" letters from R. K. Call to said captain-general, dated February 16th, 1830, duly certified, marked "Exhibit P;" also certified copy of a petition of John and James Innerarity for the issuance of a subpœna duces tecum to R. K. Call, and the order of Judge Breckenridge, dated August 2nd, 1830, that the writ do issue, marked "Exhibit Q."

Also certified copy of petition of James and John Innerarity that the *the* clerk of the Superior Court of Leon County furnish copies of official letters and documents from the files of that court. Filed on evidence and marked "Exhibit R."

Also certified copy of consent of counsel to let depositions of witnesses be taken by Fry and Debloise, commissioners, marked "Exhibit S."

185 Also certified copies of the depositions of Jose y Crusat, John Brosnaham, and Joseph E. Caro. Filed in evidence and marked "Exhibit T."

Also certified copy of an affidavit of John Innerarity of the loss of the original exemplification of the grant to John Forbes of lands between the Apalachicola and Choctawhatchie rivers. Filed in evidence and marked "Exhibit U."

Also certified copy of an official copy of the grant to John Forbes and Company and certified to by Gabriel Rameras, notary, on 23rd of June, 1824, in Spanish, with a certificate of the captain-general, dated 11th of February, 1829; also in Spanish with a translation into Engish attached. Filed in evidence and marked "Exhibit V."

Also certified copy of petition to the governor of Florida, dated 27th of March, 1819, by John Innerarity, asking order of ejectment against certain trespassers on his lands between the Apalachicolan and Choctawhatchie rivers, with orders issued thereon, and the order of ejectment of Gov. Callova, dated Oct. 7th, 1819. Filed in evidence and marked "Exhibit W."

Also certified copy of an official copy of the ejectment order of Gov.

Callova, dated 8th day of October, 1819, official copy certified to Oct. 22nd, 1819. Filed in evidence and marked "Exhibit X."

Respectfully submitted.

R. B. ARCHIBALD,
Special Master.

(The foregoing is endorsed as follows:) "# 210. P. 225. L. I. In United States District Court. Southern District of Florida. Theodore Dalcour et al. vs. The United States. Report of special master. Filed Mar. 17, 1904. E. O. Locke, clerk."

186 (From the minutes of the District Court of the United States for the Southern District of Florida. Adjourned term Tuesday, May 24th, 1904. Page 148.)

Present: Hon. James W. Locke, district judge.

Marshal, clerk, crier and bailiffs in attendance. Ordered, that court be opened.

Whereupon court is opened by due proclamation.

* * * * * * *

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES.

This cause is argued.

* * * * * * *

Ordered, that court adjourn for one day.

Whereupon court is adjourned as ordered.

Attest:

E. O. LOCKE, *Clerk.*

187 United States District Court, Southern District of Florida.

THEODORE DALCOUR ET AL.
against
THE UNITED STATES.

All evidence for both parties having been taken and the cause coming on for final hearing, the petitioners move the court for leave to amend their petition so that it shall allege that the petitioners rely upon the title evidenced by the registro, or original title papers introduced by the defendant, which proposed amendment is herewith submitted.

W. W. DEWHURST,
BLOUNT & BLOUNT,
Solicitors for Petitioners.

This amendment is permitted as prayed, by consent.
May 25th, 1904.

JAMES W. LOCKE, *Judge.*

(The foregoing has the following indorsements:) "210. P. 224. L. 1. District Court of United States, Southern District of Florida. Theodore Dalcour et al. vs. United States of America. Filed May 25th, 1904. E. O. Locke, clerk. Motion to amend petition. Order."

188 *Amendment to petition.*

In District Court of the United States, Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES.

All the evidence in this case on behalf of both parties, being introduced and the cause coming on for final hearing, the petitioners amend their petition by adding to the petition, immediately before the prayer for relief therein, the words following, to wit:

"That the grant (heretofore correctly described in this petition except as to date) to the lands described in this petition and to which petitioners claim title, and upon which they rely was made by the captain-general of Cuba on February 20th, 1818, and has been altered so that it purports to have been made on January 10th, 1818."

BLOUNT & BLOUNT,
W. W. DEWHURST,
Solrs. for Petitioners.

(The foregoing is endorsed as follows:) "# 210. P. 225. L. 1. U. S. District Court, Southern District of Florida. T. Dalcour et al. vs. United States. Amendment to petition. Filed May 25, 1904. E. O. Locke, clerk."

189 In the District Court of the United States for the Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES.

Motion.

Now comes the defendant and move the court for leave to withdraw the consent, appearing of record, to the filing of the amendment to the amended bill herein, on the 25th day of May, 1904, upon the ground that the said consent was agreed to and entered into by mistake.

J. N. STRIPLING,
United States Attorney.
ROBERT A. HOWARD,
U. S. Special Attorney.

(The foregoing has the following endorsement:) "210. 225 L. 1. U. S. District Court, Southern District of Florida. Theodore Dalcour et al. vs. The United States. Motion to withdraw consent. Filed July 6, 1904. E. O. Locke, clerk."

190 In the District Court of the United States, Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
UNITED STATES.

In the above stated cause, counsel for defendant having represented to the court that his consent to the amendment filed herein on the 25th day of May, A. D. 1904, whereby the complainant relies upon the registro as muniment of title, and counsel for defendant now representing that such consent was made inadvertently and desiring to withdraw the same, it is hereby ordered upon consent of the parties, complainants and defendant, that such consent be withdrawn, and that the application to amend be submitted to the court.

Done and ordered this 6th day of July, A. D. 1904.

JAMES W. LOCKE, *Judge.*

(The foregoing has the following endorsement:) "210/225. L. 1. U. S. District Court, Southern District of Florida. Theodore Dalcour et al. vs. the United States. Order allowing withdrawal of consent. Filed Jul. 6, 1904. E. O. Locke, clerk."

191 *Decree.*

In the District Court of the United States in and for the Southern District of Florida.

THEODORE DALCOUR & OTHERS, HEIRS of John Forbes, deceased, Fanny W. J. Innerarity and others, descendants and heirs of James Innerarity, and Victoria Innerarity & others, descendants and heirs of John Innerarity,
vs.
THE UNITED STATES.

This cause coming on to be heard at this term upon the petitions, answer, replication, and proof, and after argument of counsel, has been taken under advisement by the court.

Whereupon the law and the evidence being duly considered, it is now ordered, adjudged, and decreed that the grant by Cienfuegos, the captain-general of Cuba, to John Forbes & Company, made on the 20th day of February, A. D. 1818, which was so altered as to appear to have been made on the 10th day of January, A. D. 1818, for a tract of land in West Florida, commencing on the Appalachicola River at a point opposite the mouth of Sweetwater Creek, running thence due west to the River Choctawhatchee, thence following the course of said river to its mouth on the Bay of St. Rosa, thence easterly, winding along the shores of said bay and the sea to the lands granted to the firm of Forbes and Company by the Indians, running thence along the western boundary of said lands up the Appalachicola River to the point of beginning, is a valid, just, and binding title against the United States.

It having been admitted on the pleadings in this cause that the petitioners herein are the heirs and legal representatives of John Forbes, James Innerarity, and John Innerarity, to whom, under the firm name of John Forbes and Company, said grant was made, and an order herein having been made on the 5th day of July, A. D. 1902, that the survivors of the persons named in the original amended petitions, to wit, Theodore Dalcour, Stephen Tennant, Henrietta Tennant, Blanch Bruce,
192 and her husband Robert Bruce, Jules Fontena, Leocadie Morrison, formerly Leocadie Tennant, Helen Durcos, and her husband Marcal Drucos, Louise M. Innerarity, Emanuel Innerarity, Margaret Hiern, and her husband Charles H. Hiern, James I. Innerarity, Fanny Wycoff, and her husband Cornelius Wycoff, Eloisa Wilson, and her husband John Wilson, Albert H. W. Innerarity, Elixa Z. Boggs, and her husband R. N. Boggs, Eliza Minor, Harriet Deschappelles, and her husband E Le Breton Deschappelles, Eliza M. Barton, Eliza Melanie Innerarity, John Hulse, Victoria Hulse, and Emma Taylor, should thereafter prosecute the suit herein for the benefit of all persons lawfully claiming said tract of land under the said John Forbes, James Innerarity, and John Innerarity, according to their respective interests, and that if any one or more of said above-named persons so authorized to prosecute should have become deceased before the final determination of this cause, it should proceed in the name of said above-named persons; it having been suggested to the court that Theodore Dalcour, one of the persons above named ordered to prosecute by said interlocutory order and decree, dated July 5th, 1902, is now dead, it is further ordered, adjudged, and decreed that said Stephen Tennant, Henrietta Tennant, Blanch Bruce, Jules Fontena, Leocadie Morrison, Helen Drucos, Louis M. Innerarity, Emanuel Innerarity, Margaret Hiern, James I. Innerarity, Fanny Wycoff, Eloise Wilson, and her husband John Wilson, Albert H. W. Innerarity, Elixa Z. Boggs, Eliza Minor, Harriet Deschappelles, and her husband E. Le Breton Deschappelles, Eliza M. Barton, Eliza Melanie Innerarity, John Hulse, Victoria Hulse, and Emma Taylor, or such of them as are now living, are entitled to receive from the United States a patent for all the above-described tract of land not sold or otherwise disposed of by the United States, and entitled to enter any of the public lands of the United States liable to private entry, at one dollar and a quarter per acre, to an amount equal in extent to that which has been sold by the United States within the boundaries of the above-described tract so granted to John Forbes and Company, according to the 6th section of the act of Congress approved June 22nd, 1860.

It is further ordered, adjudged, and decreed that said Stephen
193 Tennant, Henrietta Tennant, Blanch Bruce, Jules Fontena, Leocadie Morrison, Helen Drucos, Louis M. Innerarity, Emanuel Innerrarity, Margaret Hiern, James I. Innerarity, Fannie Wycoff, Eloisa Wilson, and her husband John Wilson, Albert H. W. Innerarity, Eliza Z. Boggs, Eliza Minor, Harriet Deschappelles, and her husband E. Le Breton Deschappelles, Eliza M. Barton, Eliza Melanie Innerarity, John Hulse, Victoria Hulse, and Emma Taylor, and such of them as are now living, and the survivors of them, shall hold the said lands patented hereunder and said rights to enter under this decree for the use and benefit of the legal representatives of said John Forbes, James Innerarity, and John Innerarity.

It is further ordered, adjudged, and decreed that R. B. Archibalds, esq., be, and he is hereby, appointed special master in this cause to ascertain and report to this court, according to the United States surveys thereof, the lands within the boundaries of said grant to John Forbes & Company herein and hereby confirmed, yet unsold by the United States, and the area according to said surveys of the lands in said grant that have been sold by the United States.

Done and ordered in open court this the 5th day of December, A. D. 1904.

JAMES W. LOCKE, *Judge.*

(Endorsed:) "#210, p. 225. L. 1. U. S. District Court Southern District of Florida. Theodore Dalcour et al. vs. The United States. Final decree. Filed Dec. 5th, 1904. E. O. Locke, clerk. Ent. in O Book, p. 82."

194 *Suggestion of diminution.*

In the District Court of the United States Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES.

Now comes the defendant, the United States, and suggests to the court that whereas it appears from the record that at the hearing of this cause on the 25th day of May, 1904, the petitioners asked leave to amend their petition by adding to the petition, immediately before the prayer for relief therein, the words following, to wit:

"That the grant (hereinbefore correctly described except as to date) to the lands described in this petition and to which petitioners claim title and upon which they rely, was made by the captain-general of Cuba on February 20th, 1818, and has been altered so that it purports to have been made on January 10th, 1818."

And whereas it appears that this amendment was permitted as prayed for by consent, and that this consent of counsel to this amendment having been made by inadvertence and mistake, the same was by consent, on the 6th day of July, 1904, withdrawn and the amendment submitted to the court.

And whereas at the argument of the cause the amendment was treated as having been allowed, and the defendant in reply thereto claimed that the said amendment set up a new and different cause of action from that asserted in the original petition herein, in that the claimant now
195 claimed under a grant alleged to have been made to John Forbes and Company by the captain-general of Cuba on the 20th day of February, 1818, whereas in and by the original petition the claimant claimed under a grant made on the 10th day of January, 1818, and that the said cause of action is barred by not having been brought within the limitations of the act of 1860, extended by the act of 1872; and further in reply denied that a grant of the land mentioned in said petition was made by the captain-general of Cuba to John Forbes and Company on the 20th

day of February, 1818; and further in reply claimed that if a grant for the land mentioned in these proceedings was made by the captain-general of Cuba, as alleged, on the said 20th day of February, 1818, the said alleged grant was made after the 24th day of January, 1818, and was declared and agreed to be null and void by the terms of Article VIII of the treaty of the United States of America and the King of Spain on the 22nd of February, 1819.

Now the defendant suggests that an order be made nunc pro tunc that said amendment was allowed by the court, and that the defendant be permitted to file its answer to said amended petition setting up said defenses as hereinbefore stated, nunc pro tunc.

J. N. STRIPLING,
U. S. Attorney.

(The foregoing is endorsed as follows:) "# 210. Pg. 225. L. 1. U. S. District Court Southern District of Florida. Theodore Dalcour et al. vs. The United States. Suggestion of diminution. Filed Mar. 16, 1905, as of July 7th, 1904. E. C. Locke, clerk."

196 (From the minutes of the stated term in the District Court of the United States, in and for the Southern District of Florida, Thursday, March 16, 1905, page 275, book D.)

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES OF AMERICA.

Suggestion of diminution of the record herein being filed and counsel for both plaintiff and defendant being present and argument had, upon consideration thereof it is ordered, as follows, viz:

Now, at this term of the court, in open court, came the United States, by J. N. Stripling, esqr., district attorney, and calls the attention of the court to the fact that the record in this cause fails to show that the proposed amendment to the petition offered by the petitioners at the hearing on the 25th day of May, A. D. 1904, was acted upon, and said amendment prayed for was made therein; now, after argument of counsel for petitioners, and on behalf of the United States, it is ordered that the amendment to the original petition herein is hereby allowed, and it be amended by adding thereto, immediately before the prayer therein, the following words, to wit: "That the grant (heretofore correctly described except as to date) to the lands described in the petition, and to which petitioners claim title, and upon which they rely, was made by the captain-general of Cuba, February 20th, 1818, and has been altered so that it purports to have been made on January 10th, 1818." It is further ordered, upon motion of the United States, that the answer of the United States to said amended petition here presented be permitted to be filed.

It is further ordered and decreed that said orders be made in said cause nunc pro tunc, as of the 7th day of July, A. D. 1904.

Done and ordered in open court this 16th day of March, A. D. 1905.

JAMES W. LOCKE, *Judge.*

The petitioners, by their counsel, except to that part of said order
197 wherein the United States are allowed to file an additional answer nunc pro tunc, and the filing of such answer.

JAMES W. LOCKE, *Judge.*

And the additional answer aforesaid is filed herein as of July 7th, A. D. 1904.

Ordered, that court adjourn for one day. Whereupon court is adjourned as ordered.

Attest:

E. O. LOCKE, *Clerk.*

198 *Additional answer to amended petition.*

In the District Court of the United States Southern District of Florida.

DALCOUR ET AL
vs.
THE UNITED STATES.

Now come the defendant, and for additional answer to the petition herein, as amended, says that the said amendment asserts and sets up a new and different cause of action from that asserted in the original petition herein, in that the claimant now claims under a grant alleged to have been made to John Forbes and Company, by the captain-general of Cuba, on the 20th day of February, 1818, whereas, in and by the original petition the claimant claimed under a grant made on the 10th day of January, 1818; and the defendant says that the said due cause of action is barred by not having been brought within the limitation of the act of 1860 and extended by the act of 1872.

And defendant further says, that it denies that a grant of the land mentioned in said petition was made by the captain-general of Cuba to John Forbes and Company on the 20th day February, 1818, as is alleged in said amendment.

And defendant says, that if a grant for the lands mentioned in these proceedings was made by the captain-general of Cuba, as alleged, on the 20th day of February, 1818, the said alleged grant was made after the 24th day of January, 1818, and was declared and agreed to be null and void by the terms of Article VIII of the treaty between the United States of America and the King of Spain on the 22nd day of February, 1819.

J. N. STRIPLING,
U. S. Attorney.

(The foregoing has the following endorsement:) "# 210. Pg. 225. L. 1. U. S. District Court Southern District of Florida. Theodore Dalcour et al. vs. The United States. Additional answer to amended petition. Filed Mar. 16, 1905, as of July 7th, 1904. E. O. Locke, clerk."

199 *Report of master as to lands sold and unsold.*

In the District Court of the United States in and for the Southern District of Florida.

THEODORE DALCOUR AND OTHERS, HEIRS OF JOHN Forbes, deceased, Fanny W. J. Innerarity and others, descendants and heirs of James Innerarity and Victoria Innerarity and others, descendants and heirs of James Innerarity,

vs.

THE UNITED STATES OF AMERICA.

To the Honorable JAMES W. LOCKE, *Judge of said Court.*

I have the honor to report that under and by virtue of the order of this honorable court, dated December 5th, 1904, wherein I was appointed special master in the above-entitled cause and directed to "ascertain and report to this court, according to the United States surveys thereof, the lands within the boundaries of the grant to John Forbes and Company, yet unsold by the United States, and the area, according to said surveys of the lands in said grant that have been sold by the United States," I have taken testimony in regard to said matters, the only witness introduced being J. M. Dell, land clerk for the State of Florida, for detai ed work for the United States, whose testimony is hereto attached, marked "Exhibit A;" said witness produced the list of lands sold and disposed of alleged to be within the boundaries of said grant to John Forbes, which list is hereto attached.

From said testimony I ascertain and report that of said lands within said grant there remains undisposed of (9,681.49) acres and more particularly described as follows, to wit:

(Here follows a statement by section, township, and range of the lands not disposed of, in terms set out in the decree herein dated April 8th, 1905, 12 pages; and omitted here, by agreement of counsel.)

200 * * * * * * *

And I do further find and so report that within the boundaries of said grant, according to said surveys, there are 1,190,495.45 acres which have been sold by the United States.

Respectfully submitted.

R. B. ARCHIBALD, *Special Master.*

March 17th, 1905.

201 EXHIBIT A.

In United States District Court, Southern District of Florida.

THEODORE DALCOUR ET AL.

vs.

THE UNITED STATES.

Testimony taken by order of the court March 3d, 1905; counsel for the complainants and for the United States being present.

Present: R. B. Archibald, special master, W. W. Dewhurst, J. N. Stripling, and Robt. A. Howard.

J. M. DELL, being duly sworn, deposes and says:

My name is J. M. Dell; I reside in Gainesville, Florida; I am 57 years of age, and I am land clerk for the State of Florida, for detail work for the United States land office at Gainesville, Florida.

By Mr. DEWHURST, for complainant's solicitor:

Question. Please examine complainant's "Exhibit D," the township maps of township one N. of R. seven west and township 2 north of ranges 7 & 8 west in connection with complainant's "Exhibit L," sectional map of the western part of Florida, and state whether a line drawn due west from a point opposite the mouth of Sweet Water Creek to the Chocathatchee River will include all of township 1 north of ranges 8 to 17, inclusive, west,

T. 1 S., rgs. 8 to 17, inclusive, west.
T. 2 S., rgs. 8 to 22, " "
T. 3 S., " " 20, " "
T. 4 S., " 9 15, " "
T. 5 S., " 8 14, " "
T. 6 S., " 8 13, " "
T. 7 S., " 8 12, " "
T. 8 S., " 8 11, " "
T. 9 S., " 7 11, " "

202 according to the U. S. public surveys and the plats thereof in the United States land office at Gainesville, Florida.

Answer by J. M. DELL. It does, with the exception of township 1 west of range 17, and little in T. 1 north 16 west; also, all in T. 2 rgs. 18 to 22 north of the Choctawhatchee River.

Have you lately made a written statement of the lands within the townships and ranges set out in the last interrogatory which lie east of the Choctawhatchee River according to the plats on file in the U. S. land office at Gainesville, Fla., describing, according to the U. S. surveys, the lands in such townships still undisposed of by the U. S., and area of those which have been disposed of?

Ans. I have.

(Witness handed written statement purporting to be the statement set forth in the last interrogatory and say whether or not that is the statement referred to in your last answer.)

Ans. It is.

Ques. Was that statement made from the township plats in the U. S. land office, by you, and does it correctly show the lands designated upon such plats as undisposed of?

Ans. It does.

Ques. Please state how you arrived at the area of the lands disposed of as the same appears in this statement.

Ans. By subtracting the undisposed-of area from the total area.

Ques. Is this wholly in your handwriting and made wholly by you?

Ans. It is.

Ques. I find in your statement you have included certain lands in sections 4 and 5 of T. 2 S., R. 28 west; are those lands embraced within the boundaries of the lands decreed to have been granted to John Forbes & Company, the language of the decree being, "commencing on the

Apalachicola River at a point opposite the mouth of Sweet Water Creek, running thence due west to the river Choctawhatchee and from thence following the waterways back to the point of beginning?"

Ans. Yes; they are embraced in that description.

203 Ques. Are the disposed of lands, as shown by your statement of T. 2 S., R. 23 west, lands which lie east of the Chactawhatchee Bay in said township?

Ans. Yes, sir.

(Complainant offers in evidence the statement compiled in the land office in Gainesville, by the witness, as to the undisposed of lands and the area of the lands disposed of in that part of the tract of land decreed to have been granted to John Forbes & Company, by a decree of this court dated Dec. 5, 1904, embraced within the townships and ranges as shown by said statement.

Defendant's counsel objects to this testimony because the lands mentioned in said statement are not properly and sufficiently brought within the lines and descriptions of the grant to John Forbes & Co., as set out in the petition.)

Ques. Will you examine again complainant's "Exhibit D," and state whether a line drawn due west from the Apalachicola River to the Chactawhatchee River beginning at a point at the mouth of Sweet Water Creek would embrace any other lands besides those contained in the statement just offered in evidence?

Ans. Yes, sir; it would embrace the southern parts of sections 31 to 36, inclusive, in township 2, N., R. 8, 9, 10, 11, 12, 13, 14, 15, 16, and part of sec. 32 in 17.

Ques. (By deft.) Would a line projecting from a point on the Apalachicola River opposite Sweet Water, on the map of the U. S. survey, coincide exactly with sectional lines?

Ans. I could not say.

Ques. (By deft.) You can not definitely state by sec. lines the northern boundary of that grant?

Ans. No, sir; I can not.

Ques. (By deft.) Do you know from your examination whether there ever was any survey of the lands embraced in the description in that grant?

204 (Objected to as immaterial by complainant's counsel.)

Ans. I have never seen any evidence of it.

Ques. (By deft.) Would a description of land as bounded upon the west by the river Perdido, on the north by the boundary line of the U. S., having its eastern limit where the St. John's River empties into the Atlantic Ocean, and for its southern boundary the Gulf of Mexico, include all the lands about which you have testified this morning?

(Objected to as irrelevant and immaterial, and not within the scope of the reference made in the decree or any order of reference.)

Ans. Yes, sir.

Ques. (By compl's counsel.) Please state if within the exterior lines of the lands embraced in your statement there are included lands still unsurveyed.

Ans. Yes, sir.

Ques. State if there exists in the land office any plats of the lands in township 9 S., R. 9.

Ans. None that I could find.

Ques. Has there been allowed at the Gainesville land office homestead entries within the townships embraced in your statement which you have considered as lands disposed of but which have not been proved up?

Ans; Yes; a considerable area.

Ques. Is there also a considerable area within the same townships selected by the State under the swamp-land act and not yet approved which you have in your statement—you have included in the area of the lands disposed of?

Ans. There is.

J. M. DELL.

Subscribed and sworn to before me this 3d day of March, A. D. 1905.

R. B. ARCHIBALD, *Special Master.*

205 (Here follows 82 sheets, each setting out the lands in a particular township disposed of, as reported by the master, by section, township, and range, as set out in the decree herein dated April 8th, 1905; also the total area of each township, and the area therein disposed of by the United States, all of said sheets covering the townships as follows):

T. 1 N., ranges 8 to 16 W., inclusive.
T. 1 S., ranges 8 to 17 W., inclusive.
T. 2 S., ranges 8 to 23 " "
T. 3 S., ranges 8 to 20 " "
T. 4 S., " 9 to 16 " "
T. 5 S., " 8 to 14 " "
T. 6 S., " 8 to 13 " "
T. 7 S., " 8 to 12 " "
T. 8 S., " 8 to 12 " "
T. 9 S., " 9 to 12 " "

* * * * * * *

234 *Exceptions to master's report*

In the District Court of the United States. Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES.

Now comes the defendant, the United States, by J. N. Stripling, U. S. district attorney, and files this, its exceptions to the report of the special master herein, filed on the 17th day of March, 1905, and for ground of exceptions says:

1. That the special master erred in finding and reporting that of the said lands within said grant there remained undisposed of, 79,613.74/100 acres, and that 1,190,495.43 acres have been disposed of by the United States, because the lands stated and reported according to United States surveys are not shown to be within the boundaries of the grant made to John Forbes & Company, stated in said decree herein of December 5, 1904.

THE UNITED STATES,
By J. N. STRIPLING,
U. S. District Attorney.

(The foregoing has the following endorsement:) "No. 210. Pg. 225. L. 1. U. S. District Court, Southern District of Florida. Theodore Dalcour et al. vs. The United States. Exceptions to the master's report, as to lands undisposed of and disposed of. Filed Mar. 18, 1905. E. O. Locke, clerk."

235 *Motion and order that original grant be transferred to clerk of Supreme Court.*

In the District Court of the United States. Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES.

Now comes the United States, defendant in the above cause, and moves the court in whose safe-keeping is now the original grant from the captain-general of Cuba to John Forbes & Company, which was in the custody of the clerk of the Circuit Court of Escambia County, Florida, introduced in evidence by the said defendant at the hearing of said cause, be transmitted to the clerk of the Supreme Court of the United States with the transcript of the proceedings upon the appeal herein, for the inspection of the Supreme Court; the said original grant to be returned to this court after the disposition of the cause by the Supreme Court for delivery to the lawful custidian thereof.

J. N. STRIPLING,
U. S. District Attorney.

Upon reading and considering the foregoing motion it is ordered that said motion be allowed and that such original grant be transmitted to the clerk of the Supreme Court, with the transcript of the proceedings herein.

JAMES W. LOCKE, *Judge.*

(The foregoing has the following endorsements:) "Dalcour et al. vs. The United States. Motion to transmit and order to transmit original grant with transcript to the Supreme Court. Filed Mar. 18, 1905. E. O. Locke, clerk. Ent. on Min., pg. 275."

236 *Replication to amended answer.*

In the District of the United States for the Southern District of Florida.

DALCOUR ET AL.
vs.
THE UNITED STATES.

The replication of Stephen Tennant, Henrietta Tennant, Blanch Bruce, Jules Fontena, Leocadie Morrison, Helen Drucos, Louis M. Innerarity, Emanuel Innerarity, Margaret Hiern, Fanny Wykoff, James I. Innerarity, Eloise Wilson, her husband, John Wilson; Albert H. W. Innerarity, Eliza Z. Boggs, Elizor Minor, Harriet Deschappelles, her husband, E. le Breton Deschappelles; Eliza M. Barton, Eliza Melanie Innerarity, John

Hulse, Victoria Hulse, and Emma Taylor, survivors of the petitioners, on behalf of themselves and all others interested to the additional answer of the United States filed herein nonc pro tunc as of the 7th day of July, 1904.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception which may be had to the manifold errors, uncertainties, and insufficiencies of the said additional answer of the United States for replication thereto, do say that they do and ever will aver, maintain, and prove said amended bill to be true, certain, and sufficient in law to be answered unto by said respondent, and that the said additional answer of the United States is uncertain, untrue, and insufficient in law to be replied unto by these repliants.

Without this, that any other matter or thing in said answer contained material or effectual in law to be replied unto and not herein sufficiently confessed, traversed, avoided, or denied, is true.

All of which things these repliants have already proved and humbly pray as in and by their amended bill they have already prayed.

W. A. BLOUNT,
W. W. DEWHURST,
Solicitors for Petitioners.

(The foregoing has the following indorsement:) "# 210. Pg. 225. L. 1. District Court of United States, Southern District of Florida. Dalcour et al. vs. United States. Replication to amended answer filed nunc pro tunc. Filed Mar. 28th, 1905, as of July 6th, 1904. E. O. Locke, clerk."

* * * * * * *

238 *Final decree.*

In the District Court of the United States in and for the Southern District of Florida.

THEODORE DALCOUR AND OTHERS, HEIRS OF John Forbes; Fanny W. J. Innerarity and others, descendants and heirs of James Innerarity; Victoire Innerarity and others, descendants and heirs of John Innerarity,
vs.
THE UNITED STATES.

This cause coming to be heard at this term upon the report of the master appointed on the 5th day of December, A. D. 1904, in the decree confirming the validity of the grant hereinafter described, to ascertain and report to the court, according to the United States surveys thereof, the lands within the boundaries of the grant made by the Government of Spain to John Forbes and Company and confirmed in said decree of this court dated the 5th day of December, A. D. 1904, which are yet undisposed of by the United States, which report was filed on the 17th day of March, A. D. 1905, and exceptions thereto having been waived by counsel for petitioners and the exceptions taken thereto by the district attorney of the United States on behalf of the respondent having been considered and been overruled, has been considered by the court.

Whereupon, the law and evidence being duly considered, the court doth approve the report of the special master aforesaid, and finds that the same should in all respects be confirmed, and doth find from the evidence that the lands set forth and described according to the United States surveys thereof, in the report of the said special master and hereinafter fully set forth and described, are within the boundaries of the grant made by the Government of Spain to John Forbes and Company on the 20th day of February, A. D. 1818, and are the lands yet undisposed of by the United States of the lands granted to John Forbes and Company by the captain-general of Cuba and confirmed to the legal representatives of John Forbes, James Innerarity, and John Innerarity by decree of this court dated December 5th, A. D. 1904, and further finds that the
239 area of the lands granted as aforesaid to John Forbes and Company which have been disposed of by the United States is one million one hundred and ninety thousand four hundred and ninety-five (1,190,495) and 45/100 acres; and the court doth further find that included in said disposed-of lands there is a certain undefined portion of said lands embraced within said grant to John Forbes and Company covered by homestead entries thereon, made under the land laws of the United States, which homestead entries have not been proved up; and certain of said lands have been selected as swamp lands and the selection not approved; and a certain small area of said lands is yet unsurveyed.

It is therefore ordered, adjudged, and decreed by the court that the said report of R. B. Archibald, esq., as special master herein, be and the same is hereby confirmed; that as decreed on the 5th day of December, A. D. 1904, the grant made by Cienfuegos, the captain-general of Cuba to John Forbes and Company, for the tract of land in West Florida, commencing on the Apalachicola River at a point opposite the mouth of Sweet Water Creek, running due west to the river Choctawhatchee, thence following the course of said river to its mouth, on the Bay of St. Rosa, thence eastwardly winding along the shores of said bay and the sea, to the lands granted to the firm of John Forbes and Company by the Indians, running thence along the western boundary of said lands, up the Apalachicola River to the point of beginning is a valid, just, and binding title against the United States; that according to the United States surveys extended over said granted lands there is embraced therein according to said United States surveys all the lands (except a small area of townships eight and nine in what is known as "The Forbes purchase") situated in the State of Florida between the Apalachicola and Choctawhatchee rivers lying south of the township line dividing township one north from township two north; said lands being described on the plats of the United States as all the lands west of the Apalachicola River and east of the Choctawhatchee River in—

Township one (1), north of ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, inclusive.

Township one (1), south of ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 west, inclusive; or, according to the Tallahassee base line, township one south of ranges eight to twenty-two, inclusive.

240 Township two (2), south of ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 west, inclusive; or, according to the Tallahassee base line, township two south of ranges eight to twenty inclusive.

Township three (3), south of ranges 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 west, inclusive or, according to the Tallahassee base line; ranges eight to seventeen inclusive.
Township four (4), south of ranges 9, 10, 11, 12, 13, 14, 15, 16 west, inclusive.
Township five (5), south of ranges 8, 9, 10, 11, 12, 13, 14 west, inclusive.
Township six (6), south of ranges 8, 9, 10, 11, 12, 13 west, inclusive.
Township seven (7), south of ranges 8, 9, 10, 11, 12 west, inclusive.
Township eight (8), south of ranges 8, 9, 10, 11, 12 west, inclusive (except lands in "Forbes purchase").
Township nine (9), south of ranges 9, 10, 11, 12 west, inclusive (except lands in the "Forbes purchase").
that the following-described lands *lands* by the legal subdivisions thereof according to the United States surveys, being the lands within the boundaries of said grant to John Forbes and Company undisposed of under the land laws of the United States, and containing an area of seventy-nine thousand six hundred and eighty-one, and 49/100 acres, are the property of the legal representatives of John Forbes, James Innerarity, and John Innerarity, the grantees in said grant, who are parties to this suit and entitled to recover said lands as against the United States, to wit:

241 Township 1 north, range 8 west:

Blank	00	Nothing

Township 1 north, range 9 west:

NE. ¼ of SE. ¼	sec. 6	40.08
NE. ¼ of SW. ¼	10	40.00
SE. ¼ of SW. ¼	18	40.21
NE. ¼ of SW. ¼	19	40.02
NE. ¼ of NE. ¼	20	40.15
NW. ¼ of SW. ¼	29	40.07
NE. ¼ of NE. ¼ & NW. ¼ of SE. ¼	36	80.04

Township 1 north, range 10 west:

N. ½ of SE. ¼	6	80.12
NW. ¼ of NE. ¼	12	40.00
E. ½ of SW. ¼	17	80.02
SW. ¼ of NW. ¼ & NW. ¼ of SW. ¼	18	79.80
NW. ¼ of NE. ¼, SE. ¼ of NE. ¼, N. ½ of SE. ¼, & SW. ¼	19	319.37
SW. ¼ of NW ¼, W. ½ of SW. ¼, E. ½ of SE. ¼.	20	200.45
W. ½ of NE. ¼, E. ½ of NW. ¼, SE. ¼ of NE. ¼, NE. ¼ of NW. ¼, NW. ¼ of SE. ¼	21	280.56
S. ½ of NW. ¼, NW. ¼ of SE. ¼	28	120.36
S. ½ of NW. ¼, SE. ¼ of NE. ¼, SW. ¼, W. ½ of SE. ¼ & SE. ¼ of SE. ¼	29	400.84
W. ½ of NE. ¼, NW. ¼ & S. ½	30	559.93
NW. ¼ of NE. ¼, NW. ¼, W. ½ of SW. ¼, & E. ½ of SE. ¼	31	358.38
W. ½ of SW. ¼ & N. ½ of SE. ¼	32	159.66
NW. ¼ of NE. ¼, NE. ¼ of NW. ¼, & NW. ¼ of SE. ¼	33	119.55

Township 1 north, range 11 west:				
	NW. ¼ of NE. ¼, NE. ¼ of NW. ¼, NE. ¼ of SW. ¼, NW. ¼ of SE. ¼		2	160.04
	N. ½ of NW. ¼ & ½ of SE. ¼		4	160.14
242	S. ½ of NE. ¼, SE. ¼ of SW. ¼ & SE. ¼	sec.	8	279.79
	E. ½ of NE. ¼, SW. ¼ of NE. ¼, W. ½ of NW. ¼, SE. ¼ of NW. ¼, SW. ¼ of SW. ¼, E. ½ of SE. ¼		10	360.72
	N. ½ of NW. ¼, SW. ¼ of NW. ¼, & W. ½ of SW. ¼		12	200.12
	W. ½ of NE. ¼, W. ½, S. ½ of SE. ¼		14	478.50
	E. ½ ot NE. ¼ & SW. ¼ of NE. ¼		18	119.94
	NW. ¼		19	160.04
	SW. ¼ of NW. ¼, SW. ¼, & S. ½ of SE. ¼		20	279.58
	SW. ¼ of NE. ¼, NW. ¼ of NW. ¼, SW. ¼ of SW. ¼, S. ½ of SE. ¼, NE. ¼ of SE. ¼		21	240.57
	E. ½ of NE. ¼		22	80.37
	N. ½		23	320.31
	NW. ¼ & SE. ¼		24	320.80
	N. ½, W. ½ of SW. ¼ & SE. ¼		25	562.53
	E. ½		26	319.60
	W. ½ of SW. ¼ & SE. ¼ of SW. ¼		27	120.10
	N. ½, SW. ¼ of SW. ¼, E. ½ of SW. ¼ & SE. ¼		28	600.00
	N. ½ of NE. ¼, SE. ¼ of SW. ¼, & S. ½ of SE. ¼		29	199.87
	NE. ¼ of SW. ¼ & SE. ¼		32	199.85
	N. ½ & NW. ¼ of SE. ¼		33	361.58
	N. ½, E. ½ of SW. ¼ & SE. ¼		34	562.17
	N. ½, SW. ¼, & N. ½ of SE. ¼		35	562.94
	W. ½ of NE. ¼, S. ½ of NW. ¼, & W. ½ of SE. ¼		36	241.50
Township 1 north, range 12 west:				
	SE. ¼ of NE. ¼		8	40.08
	SE. ¼ of NW. ¼, NE. ¼ of SW. ¼		10	80.20
	All		18	639.67
	NE. ¼ of NE. ¼, SW. ¼ of NW. ¼, SE. ¼ of SE. ¼		20	120.06
	E. ½ of NE. ¼, SW. ¼ of NE. ¼, SW. ¼ of SW. ¼, & SE. ¼		24	319.84
	NW. ¼ of NW. ¼, NW. ¼ of SE. ¼		25	80.10
	NW. ¼ of NW. ¼		26	40.00
	NW. ¼ of NE. ¼		28	40.22
243	SE. ¼ of NW. ¼, SW. ¼ of SW. ¼	sec.	32	79.53
	NE. ¼ of SW. ¼		33	39.85
	N. ½ of NE. ¼		34	79.89
	NE. ¼ of NE. ¼ & NW. ¼ of NW. ¼		35	79.90
	SE. ¼ of NE. ¼ & SE. ¼ of SW. ¼		36	79.85
Township 1 north, range 13 west:				
	N. ½ of SW. ¼		2	480.30
	SE. ¼ of NE. ¼, S. ½ of SW. ¼, & SE. ¼		4	279.30
	E. ½ of NE. ¼ & SE. ¼ of SE. ¼		8	120.00
	N. ½ & SW. ¼		10	482.10
	All		12	638.72

Township 1 north, range 13 west—Continued.			
E. ½ of		14	320.20
SE. ¼ of NE. ¼, E. ½ of SE. ¼, W. ½ of NW. ¼, & W. ½ of SW. ¼		18	279.30
All		20	638.00
SE. ¼ of NE. ¼, E. ½ of SE. ¼, W. ½ of SW. ¼, & NE. ¼ of SW. ¼		22	241.04
NW. ¼		24	159.60
W. ½ of		26	320.20
E. ½ of NE. ¼, E. ½ of SW. ¼		28	159.60
NE. ¼ of		30	160.10
E. ½, N. ½ of NW. ¼, E. ½ of SW. ¼		32	481.48
NE. ¼ of NE. ¼, S. ½ of NE. ¼, E. ½ of SW. ¼, W. ½ of SE. ¼, SE. ¼ of SE. ¼		34	321.01
E. ½ of SE. ¼		36	80.19
Township 1 north, range 14 west:			
NE. ¼ of NE. ¼		2	39.97
SW. ¼		3	159.78
NW. ¼		4	159.68
N. ½ of NW. ¼, SW. ¼ of NW. ¼, NE. ¼ of SE. ¼		5	159.80
W. ½ of NE. ¼, SE. ¼ of NW. ¼, NW. ¼ of SW. ¼		6	159.70
SW. ¼ of NW. ¼, NW. ¼ of SW. ¼		12	80.00
NW. ¼		14	159.90
244 S. ½ of NW. ¼, W. ½ of SE. ¼	sec.	20	159.84
NW. ¼		22	159.98
N. ½ of 24		24	319.56
NW. ¼ of SW. ¼, NW. ¼ of SE. ¼, E. ½ of SE. ¼		24	159.78
SW. ¼ of NE. ¼, S. ½ of SW. ¼, SW. ¼ of SE. ¼		26	160.02
E. ½ of		28	319.87
S. ½ of NE. ¼, S. ½ of NW. ¼, & SW. ¼		32	199.61
N. ½, N. ½ of SW. ¼, & E. ½ of SE. ¼		34	579.94
NW. ¼		36	160.04
Township 1 north, range 15 west:			
SE. ¼		8	159.78
S. ½ of NW. ¼		10	79.10
SW. ¼ of NE. ¼, SE. ¼ of NW. ¼, E. ½ of SW. ¼, SE. ¼		14	320.84
NW. ¼ of NE. ¼, N. ½ of NW. ¼, SW. ¼ of NW. ¼, SW. ¼		18	320.84
SW. ¼ of NW. ¼, SW. ¼ of SW. ¼		20	79.93
NW. ¼, W. ½ of SW. ¼, E. ½ of SE. ¼		22	320.03
N. ½ of SW. ¼		24	80.05
E. ½ of NE. ¼, NW. ¼ of NE. ¼, SW. ¼ of NW. ¼, S. ½		26	481.32
N. ½		28	319.79
E. ½ of NE. ¼, E. ½ of NW. ¼, NE. ¼ of SW. ¼, & SE. ¼ of SE. ¼		30	239.79
SW. ¼ of NE. ¼, S. ½ of NW. ¼, SW. ¼ & SE. ¼ of SE. ¼		32	361.12
N. ½ of NE. ¼, N. ½ of NW. ¼, S. ½ of SW. ¼, & W. ½ of SE. ¼		34	319.52

Township north 1, range 16 west:			
SE. ¼ of SE. ¼		2	40.06
SE. ¼ of SE. ¼		12	40.07
NE. ¼ of SE. ¼		24	40.08
Lots 1, 7, 10, 11		30	223.04
NE. ¼ of NE. ¼		36	40.00
245 Township 1 south, range 8 west:			
Blank.			
Township 1 south, range 9 west:			
SE. ¼ of SW. ¼ & SW. ¼ of SE. ¼	sec.	31	80.58
E. ½ of SW. ¼		32	80.99
Township 1 south, range 10 west:			
NW. ¼ of SE. ¼		8	40.16
NE. ¼ of SW. ¼		21	40.02
Township 1 south, range 11 west:			
E. ½ of NE. ¼, NE. ¼ of SE. ¼, SW. ¼ of SE. ¼, & SW. ¼, NE. ¼ of NW. ¼		1	360.00
E. ½ and SW. ¼		2	479.70
NE. ¼ of NE. ¼		10	40.01
N. ½, N. ½ of SW. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼		11	520.39
All of		12	639.60
NE. ¼, N. ½ of NW. ¼		13	239.79
E. ½ of NE. ¼		14	79.98
Township 1 south, range 12 west:			
NW. ¼, & SW. ¼ of SW. ¼		1	199.95
NW. ¼, W. ½ of NE. ¼		2	240.06
SW. ¼ of NW. ¼		3	40.01
E. ½ of SE. ¼		12	79.88
SW. ¼ of NW. ¼, W. ½ of SW. ¼		13	119.73
SE. ¼ of NE. ¼, & E. ½ of SE. ¼		17	120.06
W. ½ of ¼		29	80.00
246 Township 1 south, range 13 west:			
N. ½ of SW. ¼	sec.	1	79.88
SE. ¼ of NE. ¼ & SW. ¼ of SE. ¼		2	78.62
N. ½ of NW. ¼ & SW. ¼ of NW. ¼		3	119.98
W. ½ of NW. ¼		4	79.77
S. ½ of NE. ¼		5	79.98
NE. ¼ of NE. ¼		6	80.06
W. ½ of SW. ¼ & NE. ¼ of NE. ¼		8	120.28
N. ½ of SW. ¼		12	79.84
N. ½ of NW. ¼		13	79.98
SE. ¼ of NE. ¼, W. ½ of NW. ¼, NE. ¼ of NW. ¼		14	160.26
SW. ¼ of NE. ¼		15	40.06
Township 1 south, range 14 west:			
All		2	639.44
W. ½ of SE. ¼		4	79.72
NW. ¼ of NE. ¼, SE. ¼ of NW. ¼, NE. ¼ of SW. ¼, & SW. ¼ of SW. ¼		6	159.90

Township 1 south, range 14 west—Continued.			
N. ½ of NE. ¼, SW. ¼ of NE. ¼, NE. ¼ of NW. ¼, SW. ¼ of NW. ¼, SW. ¼ of SW. ¼, W. ½ of SE. ¼		8	320.04
E. ½ of NW. ¼, NW. ¼ of NW. ¼, E. ½ of SW. ¼, W. ½ of SE. ¼		9	280.00
S. ½ of NE. ¼, E. ½ of NW. ¼, NW. ¼ of NW. ¼, NE. ¼ of SW. ¼, & SE. ¼		10	400.65
N. ½		11	320.00
E. ½ of NW. ¼		17	80.14
NE. ¼		18	159.86
W. ½ of NW. ¼		19	79.95
NE. ¼ of NE. ¼, SW. ¼ of NE. ¼, SE. ¼ of NW. ¼		23	120.13
NW. ¼ of NE. ¼, SE. ¼ of SW. ¼		24	80.15
S. ½ of NE. ¼, SE. ¼ of NW. ¼		25	120.06
N. ½ of NE. ¼		27	80.14
E. ½ of SE. ¼		30	79.94
W. ½ of NW. ¼		31	79.46
247 Township 1 south, range 15 west:			
E. ½ of NE. ¼ & W. ½ of SW. ¼	Sec.	2	160.08
E. ½ of SE. ¼		10	160.04
S. ½ of NE. ¼ & N. ½ of SE. ¼		11	160.18
S. ½ of SE. ¼		12	79.93
E. ½ of NW. ¼, E. ½ of SW. ¼, & E. ½		13	479.82
NE. ¼ of NE. ¼, SW. ¼ of NE. ¼, NW. ¼ of NW. ¼, W. ½ of SW. ¼, SE. ¼ of SW. ¼		14	239.94
W. ½ of NW. ¼, S. ½ of SE. ¼		23	160.02
W. ½ of SW. ¼		25	80.13
W. ½ of SW. ¼		27	80.28
E. ½ of NE. ¼		28	80.11
Township 1 south, range 16 west:			
NE. ¼ of NE. ¼		1	40.02
SW. ¼ of NE. ¼ & E. ½ of SE. ¼		8	119.96
SE. ¼ of NW. ¼, N. ½ of SW. ¼, N. ½ of SE. ¼		9	200.30
E. ½ of SE. ¼		12	80.05
N. ½ of NW. ¼		15	80.12
W. ½ of NW. ¼		19	79.96
NE. ¼ of NW. ¼ & SE. ¼ of SW. ¼		21	80.04
E. ½ of NE. ¼		30	79.99
SE. ¼ of SE. ¼		32	40.02
NW. ¼ of NW. ¼ & SE. ¼ of SE. ¼		33	80.09
SW. ¼ of SW. ¼		34	40.04
E. ½ of SE. ¼		36	80.00
Township 1 south, range 17 west:			
W. ½ of NW. ¼		26	78.49
Lots 2 & 3, E. ½ of NW. ¼, & S. ½		27	493.13
N. ½, N. ½ of SW. ¼, N. ½ of SE. ¼, SE. ¼ of SE. ¼		28	521.75
NE. ¼ of NE. ¼ & N. ½ of SE. ¼		33	119.50
N. ½ of NE. ¼ & N. ½ of NW. ¼		34	159.90

248	Township 2 south, range 8 west:		
	N. ½ of NW. ¼, SE. ¼ of NW. ¼, NE. ¼ of SW. ¼	Sec. 5	158.93
	Lot # 5	19	36.75
	Lot # 6	19	35.69
	Township 2 south, range 9 west:		
	Blank.		
	Township 2 south, range 10 west:		
	SE. ¼ of SE. ¼	11	39.99
	Township 2 south, range 11 west:		
	NW. ¼	10	160.36
	Township 2 south, range 12 west:		
	NW. ¼ of SW. ¼	27	40.00
	Township 2 south, range 13 west:		
	NW. ¼ of NW. ¼	13	40.00
	NE. ¼ of NE. ¼	14	39.82
	SE. ¼ of SW. ¼	26	40.08
	Lot # 1	30	80.00
	E. ½ of NW. ¼	34	79.87
	Township 2 south, range 14 west:		
	NE. ¼ of NE. ¼ & W. ½ of SW. ¼	1	120.11
	S. ½ of SE. ¼	4	80.04
	W. ½ of SW. ¼	7	79.94
	N. ½ of NE. ¼, SE. ¼ of NE. ¼, NE. ¼ of SE. ¼	12	160.10
	NW. ¼	17	160.04
	E. ½ of NE. ¼	19	79.98
	S. ½ of SW. ¼	20	80.05
249	Township 2 south, range 15 west:		
	SE. ¼ of NW. ¼	Sec. 1	40.08
	SE. ¼ of SE. ¼	2	40.50
	W. ½ of NW. ¼, W. ½ of SW. ¼	3	159.92
	NE. ¼, W. ½ of SW. ¼	6	240.03
	SW. ¼ of NE. ¼, E. ½ of NW. ¼, NE. ¼ of SW. ¼	7	160.32
	W. ½ of NE. ¼	9	80.03
	SW. ¼ of NE. ¼, SE. ¼ of NW. ¼, W. ½ of SE. ¼	12	160.32
	NW. ¼ of NW. ¼	15	40.07
	SE. ¼ of NE. ¼	18	40.11
	E. ½ of NE. ¼ Y SW. ¼ of SE. ¼	25	119.88
	W. ½ of SW. ¼, E. ½ of SE. ¼	26	160.32
	Lots 12, 13, 14, 15	27	151.86
	All of	28	361.37
	Township 2 south, range 16 west:		
	N. ½ of SW. ¼	2	80.00
	NW. ¼ of NW. ¼ & E. ½ of SW. ¼	3	120.05
	SE. ¼ of SW. ¼ & SE. ¼ of SE. ¼	4	79.98
	N. ½ of NW. ¼, SW. ¼ of NW. ¼, W. ½ of SW. ¼	6	200.05
	SE. ¼ of SW. ¼	7	40.02
	NW. ¼ of NE. ¼ & NW. ¼ of NW. ¼	9	79.92
	SE. ¼ of NE. ¼	10	40.02
	S. ½ of NE. ¼	11	80.16
	W. ½ of SW. ¼	12	80.13

Township 2 south, range 16 west—Continued.			
N. ½ of NW. ¼		13	80.13
NE. ¼ of NE. ¼, E. ½ of NW. ¼, & SW. ¼ of SE ¼		14	160.44
Lot 2		18	40.04
N. ½ of SW. ¼		22	80.13
E. ½ of NE. ¼		32	80.15
W. ½ of NW. ¼ & W. ½ of SW. ¼		33	160.00
250 Township 2 south, range 17 west:			
SW. ¼ of NW. ¼ & NW. ¼ of SW. ¼	Sec.	4	79.91
SE. ¼ of NE. ¼		13	40.00
W. ½ of NE. ¼ & NW. ¼		30	238.95
Lots 1 & 2		33	126.08
Township 2 south, range 18 west:			
Blank.			
Township 2 south, range 19 west:			
Lots 2 & 3		21	94.50
Fractional		22	6.60
N. ½		29	319.92
NE. ¼ of		30	159.76
NE. ¼, SW. ¼, & W. ½ of SE. ¼		33	400.65
NE. ¼ of SE. ¼		36	35.63
Township 2 south, range 20 west:			
All		11	9.54
Lot 1		8	49.73
Lots 1 & 2		9	132.27
Lots 1 & 2		10	156.62
All		20	337.50
Lot 3		21	54.40
W. ½ of NW. ¼		28	80.00
E. ½ of NE. ¼		29	80.00
S. ½ of NE. ¼, S. ½ of NW. ¼, & S. ½		31	309.10
S. ½ of NW. ¼ & S. ½		32	400.70
W. ½ of SW. ¼		33	80.20
251 Township 2 south, 21 west:			
Lots 2 & 3	sec.	19	171.35
Lots 1, 3 & 4 & SW. ¼		27	375.73
All		28	465.20
All		29	575.70
All		30	635.83
All		31	1.82
All		32	74.76
All		33	181.60
All		34	323.20
S. ½ of NE. ¼, S. ½ of NW. ¼, & lots 1, 2, 3		35	347.80
S. ½ of NE. ¼, S. ½ of NW. ¼ & S. ½		36	388.73
Township 2 south, range 22 west:			
Blank.			
Township 2 south, range 23 west:			
All		4	484.50
N. ½ of NW. ¼ & E. ½		5	400.77

Township 3 south, range 8 west:			
Blank.			
Township 3 south, range 9 west:			
E. ½ of NE. ¼		15	79.65
Township 3 south, range 10 west:			
E. ½ of NW. ¼, S. ½ of SE. ¼		2	160.06
NW. ¼ of SW. ¼		22	39.98
Lot 3		24	79.98
Lot 4		24	20.62
W. ½		27	320.40
Lot 7		36	64.04
Township 3 south, range 11 west:			
Blank.			
252 Township 3 south, range 12 west:			
Blank.			
Township 3 south, range 13 west:			
SW. ¼ of NW. ¼	sec.	7	40.02
SW. ¼ of SW. ¼		12	40.02
NW. ¼ of NW. ¼		18	40.09
Township 3 south, range 14 west:			
Lot 1		7	134.26
E. ½ of NE. ¼		13	80.01
W. ½ of NW. ¼		33	80.18
Township 3 south, range 15 west:			
All fractional	sec.	6	6.88
All fractional		8	18.65
All fractional		17	19.72
W. ½ of NE. ¼, W. ½ & SE. ¼		31	559.27
W. ½ of SW. ¼		32	80.00
Township 3 south, range 16 west:			
W. ½ of NE. ¼, NW. ¼ & S. ½		18	528.63
Lots 1 & 3		20	114.50
SW. ¼		21	156.89
NE. ¼		22	160.19
N. ½ of SE. ¼ & W. ½		23	400.18
S. ½ of SW. ¼, SW. ¼ of SE. ¼		24	119.91
E. ½ of NW. ¼, NW. ¼ of NW. ¼, & SW. ¼		25	279.47
S. ½ of NE. ¼, N. ½ of NW. ¼, SW. ¼ of NE. ¼, & S. ½		26	518.16
S. ½ of NE. ¼, NW. ¼, lots 1, 2, 3		27	447.14
All		28	140.52
All		34	14.98
All		35	318.40
NW. ¼, W. ½ of SE. ¼, SE. ¼ of SE. ¼, lots 1 & 2		36	422.54
253 Township 3 south, range 17 west:			
E. ½ of NE. ¼ & E. ½ of SE. ¼	sec.	1	160.30
E. ½ of SW. ¼		3	80.13
W. ½ of NW. ¼, SW. ¼, W. ½ of SE. ¼, SE. ¼ of SE. ¼		4	341.82
All		5	384.00

Township 3 south, range 17 west—Continued.			
All		6	88.00
All		9	62.40
All		10	149.40
Lots 1 and 2		11	142.80
S. ½		12	320.48
All		13	364.65
All		14	2.00
Township 3 south, range 18 west:			
SW. ¼		1	164.78
SE. ¼		2	159.89
N. ½ of NE. ¼		11	79.98
N. ½ of NW. ¼		12	79.96
SW. ¼, W. ½ of SE. ¼		19	201.87
SE. ¼, E. ½ of SW. ¼		20	240.00
SW. ¼		21	160.16
S. ½		25	305.09
S. ½		26	320.36
All		27	538.34
All		28	316.04
All		29	84.11
All		34	3.14
All		35	174.16
All		36	164.34
254 Township 3 south, range 19 west:			
E. ½ of NE. ¼	sec.	1	79.87
W. ½ of SW. ¼		3	79.87
All		7	505.63
NE. ¼ of NE. ¼, W. ½ of NE. ¼, W. ½ of SE. ¼, & W. ½		8	518.20
SE. ¼ of NW. ¼, N. ½ of NW. ¼, SW. ¼ of SE. ¼, & E. ½ of SE. ¼		9	239.81
W. ½ of NE. ¼, NW. ¼, & SW. ¼ of SE. ¼		10	280.29
N. ½ of SE. ¼		11	79.97
SW. ¼ of SW. ¼, E. ½ of SW. ¼, & SE. ¼		13	279.47
E. ½ of SW. ¼, W. ½ of SE. ¼, SE. ¼ of SE. ¼		14	200.00
SE. ¼ of NE. ¼, W. ½ of NE. ¼, SW. ¼, W. ½ of SE. ¼		15	307.89
Lot 2		17	52.60
Lots 1 and 2		23	141.80
All		24	477.58
Township 3 south, range 20 west:			
S. ½		1	319.60
S. ½ of NE. ¼ & W. ½ of SE. ¼		2	558.95
All		3	546.68
Lots 1, 2, & 4		4	265.00
All		5	157.50
All		6	15.82
All		11	107.00
All		12	304.00

Township 4 south, range 9 west:			
Blank.			
Township 4 south, range 10 west:			
SE. ¼ of NE. ¼ & SW. ¼ of NE. ¼		2	80.10
NE. ¼ of SE. ¼		4	39.99
NE. ¼ of NW. ¼		9	39.99
NW. ¼ of NW. ¼		10	39.96
255 Township 4 south, range 11 west:			
SE. ¼ of SW. ¼ & SW. ¼ of SE. ¼	Sec.	35	80.14
Township 4 south, range 12 west:			
E. ½ of SE. ¼		34	80.11
Township 4 south, range 13 west:			
SW. ¼ of SE. ¼		14	40.01
S. ½ of SW. ¼, NE. ¼ of SW. ¼ & SE. ¼		26	280.14
Lots 2 & 3		35	155.00
Lots 1 & 4		36	216.07
Township 4 south, range 14 west:			
Lot 4		19	17.30
Lot 14		28	40.20
Lot 4		29	40.10
Lot 2		33	40.00
Lots 1, 5, & 6		35	124.27
Township 4 south, range 15 west:			
NE. ¼, NE. ¼ of NW. ¼. Lots 1, 2, 3, 4, 5, 6, & 10		6	404.42
All		8	299.15
Township 4 south, range 16 west:			
All fractional		1	107.00
Township 5 south, range 8 west:			
Blank.			
Township 5 south, range 9 west:			
Blank.			
Township 5 south, range 10 west:			
NW. ¼ of SE. ¼		13	39.61
256 Township 5 south, range 11 west:			
NE. ¼ of SW. ¼	Sec.	12	39.98
S. ½ of NW. ¼		1	80.00
W. ½ of NW. ¼		6	79.99
SE. ¼ of SE. ¼		14	40.02
E. ½ of NE. ¼ & SW. ¼ of NE. ¼		23	120.16
S. ½ of SE. ¼		29	80.04
NW. ¼ of NE. ¼		31	39.98
Township 5 south, range 12 west:			
SW. ¼ of SW. ¼		6	40.00
Lots 4, 5, 6, & 7		7	394.78
NW. ¼ of SE. ¼		9	39.88
SE. ¼ of SE. ¼		11	39.98
S. ½ of Lot 3		18	40.00
Lot 1		19	6.75
Lots 4, 5, & 6		23	133.23
Lots 12 & 15		25	80.00

Township 5 south, range I2 west—Continued.			
Lots 8, 9, 10, 11, 12, 13, 14, 15		26	320.00
Lot 1		27	25.49
Lot 4		28	40.00
W. ½ of NW. ¼, W. ½ of SW. ¼		30	160.06
W. ½ of SE. ¼		32	80.00
N. ½ of NW. ¼		35	79.96
NW. ¼ of NW. ¼		36	40.00
Township 5 south, range 13 west:			
Lots 3, 4, 5, & 6		5	160.00
NW. ¼ & SE. ¼		6	320.16
Lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 13, 14, 15, & 16.		7	515.80
NW. ¼, S. ½ of NE. ¼ & S. ½		8	561.33
N. ½ of NW. ¼		9	80.00
Lots 1, 2, & 3		10	120.22
Lots 7 & 8		14	80.00
Lots 1, 9, 10, 11, 12, 13, 14, & 15		15	319.28
257 (continued)			
Lots 1, 2, 3, 7, & 8	Sec.	17	200.25
Lots 2 & 3		18	78.36
All		22	641.20
W. ½ of NW. ¼		25	80.17
All		26	642.08
All		27	533.00
Lots 1, 2, 3, 4, 5, 8, 11, 12, 13		35	353.45
W. ½ of SW. ¼		36	80.13
Township 5 south, range 14 west:			
Blank.			
Township 6 south, range 8 west:			
Township south, range 9 west:			
S. ½ of lot 2 & N. ½ of NW. ¼		3	121.96
SE. ¼ of NW. ¼		30	40.03
Township 6 south, range 10 west:			
Blank.			
Township 6 south, range 11 west:			
S. ½ of NE. ¼		4	80.57
SW. ¼ of NW. ¼		5	40.24
E. ½ of NE. ¼, Y. S. ½		6	402.90
W. ½ of NE. ¼ & NW. ¼		7	242.79
W. ½ of SE. ¼ & SW. ¼		14	239.97
S. ½ of SW. ¼		20	80.16
SW. ¼ of SW. ¼		21	40.17
NE. ¼ of NW. ¼		29	40.15
SW. ¼		32	160.92
Township 6 south, range 12 west:			
SE. ¼ of SW. ¼		2	40.00
W. ½ of NE. ¼, E. ½ of NW. ¼, NW. ¼ of NW. ¼, & W. ½ of SW. ¼		5	361.41
(continued)			
258 (continued)			
E. ½ of SE. ¼, SW. ¼ of NW. ¼	Sec.	6	120.33

Sownship 6 south, range 12 west—Continued.			
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, & 10		7	384.83
W. ½ of NW. ¼, SW. ¼ of SE. ¼		8	120.19
All		10	640.72
Lots 2, 3, 4, 5, 6, 7, 8, 9, & 10		17	358.69
All fractional		22	43.00
Lot 3		23	40.00
N. ½, NW. ¼ of SW. ¼, E. ½ of SE. ¼, & NW. ¼ of SE. ¼		24	479.93
Lots 2 & 3		25	80.00
Township 6 south, range 13 west:			
Blank.			
Township 7 south, range 8 west:			
Blank.			
Township 7 south, range 9 west:			
SW. ¼	Sec.	3	160.51
Township 7 south, range 10 west:			
Blank.			
Township 7 south, range 11 west:			
SW. ¼ of NW. ¼, W. ½ of SW. ¼	Sec.	1	120.11
N. ½ of SE. ¼		2	479.82
SW. ¼ of SW. ¼		4	40.13
Lots 2, 3, 6, 7, & 8		5	200.00
Lots 3, 6, 7, 9, 10, & 14		9	240.00
SW. ¼ of SW. ¼		10	40.15
SW. ¼ of NW. ¼		12	40.09
SW. ¼ of NE. ¼, NE. ¼ of NW. ¼, NE. ¼ of SE. ¼		15	120.48
NE. ¼ of NE. ¼ & SW. ¼ of NE. ¼		23	80.26
SW. ¼ of SW. ¼		24	40.04
Township 7 south, range 12 west:			
Blank.			
259 Township 8 south, range 8 west:			
Blank.			
Township 8 south, range 9 west:			
Blank.			
Township 8 south, range 10 west:			
SW. ¼	sec.	17	160.84
E. ½ of SE. ¼		17	80.42
SW. ¼ of SW. ¼		19	40.02
W. ½ of SW. ¼		30	80.10
NE. ¼ of 31		31	160.24
SE. ¼		31	160.24
SW. ¼		32	160.50
SW. ¼		31	160.24
Township 8 south, range 11 west:			
SW. ¼ of NW. ¼, W. ½ of SW. ¼		36	120.32
Township 8 south, range 12 west:			
Blank.			
Township 9 south, range 9 west:			
Blank.			

Township 9 south, range 10 west:		
Blank.		
Township 9 south, range 11 west:		
Lots 9 & 16.....	1	80.00
Lots 6, 11, & 14.....	12	120.36
E. ½.....	13	321.12
Lots 2 & 3.....	14	99.83
Township 9 south, range 12 west:		
Blank.		

260 That the survivors of the petitioner in this suit, namely, Stephen Tennant, Henrietta Tennant, Blanche Bruce, Jules Fontena, Leocadie Morrison, Helen Durcos, Louis M. Innerarity, Emanuel Innerarity, Margaret Hiern, Fanny Wycoff, James I. Innerarity, Eloise Wilson, her husband John Wilson, Albert H. W. Innerarity, Eliza Boggs, Eliza Minor, Harriet Deschapelles, her husband E. Le. Breton Deschapelles, Eliza M. Barton, Eliza Melanie Innerarity, John Hulse, Victoire Hulse, and Emma Taylor, or such of them as were living at the date of the decree rendered herein on the 5th day of December, A. D. 1904, and the survivors of them and their assigns are entitled to receive from the United States a patent or patents for the lands last above described, and are entitled to enter any of the public lands of the United States to the amount and extent of one million one hundred and ninety thousand four hundred and ninety-five (1,190,495) and 45/100 acres of said entry to be made in conformity to the requirements of the 6th section of the act of Congress, approved June 22nd, 1860.

That the said Stephen Tennant, Henrietta Tennant, Blanch Bruce, Jules Fontena, Leocadie Morrison, Helen Drucos, Louis M. Innerarity, Emanuel Innerarity, Margaret Hiern, Fanny Wycoff, James I. Innerarity, Eloise Wilson, her husband John Wilson, Albert H. W. Innerarity, Eliza Z. Boggs, Eliza Minor, Harriett Deschapelles, her husband E. Le Breton Deschapelles, Eliza M. Barton, Eliza Melanie Innerarity, John Hulse, Victoire Hulse, and Emma Taylor, or such of them as were living on the 5th day of December, A. D. 1904, and the survivors of them shall hold said lands patented herein, and said rights to enter the public lands of the United States, for the use and benefit of the legal representatives of John Forbes, James Innerarity, and John Innerarity, partners in the firm of John Forbes and Company, and the grantees in said grant, who are parties to this suit and are entitled therein to recover said lands and said rights of entry as against the United States.

That as to the unsurveyed lands within the said grant to John Forbes and Company, the lands within said grant which have been entered under the homestead laws of the United States, which shall not be proved up and perfected into title in the several entrymen under and according to the requirements of the said homestead laws; the lands in said
261 grant selected as swamp lands, the selection of which have not been approved and the patents have not been issued therefor by the United States, and as to the respective undivided interests of the original petitioners and the heirs and legal representatives of such of the original petitioners as have died or may die before the termination of this suit, and of all persons claiming any rights to said lands or said rights of

entry under them or any of them, and as to all matters of costs, counsel fees, and other matters of like nature this court reserves to itself such further direction to carry this decree into effect according to the principles of the act of Congress of June 22nd, 1860, and as may be necessary and as may be equitable and just.

Done and ordered in open court this eighth day of April, A. D. 1905.

JAMES W. LOCKE, *Judge.*

(The foregoing is endorsed as follows:) "No. 210. Pg. 225. L. I. United States Dist. Court Southern Dist. of Florida. Theodore Dalcour et al. vs. United States. Final decree. Filed April 8th, 1905, and entered pg. 21, Jgmt. Record. E. O. Locke, clerk."

262 *Assignment of errors.*

In the District Court of the United States, Southern District of Florida.

THEODORE DALCOUR AND OTHERS, HEIRS OF John Forbes, deceased; Fanny W. J. Innerarity and others, descendants and heirs of James Innerarity; and Victoria Innerarity and others, descendants and heirs of John Innerarity,

vs.

THE UNITED STATES.

Assignment of errors.

Now comes the defendant and appellant, by Joseph N. Stripling, U. S. attorney, and says the decree herein is erroneous and assigns the following reasons therefor:

I. The court erred in making the decree of May 8th, 1901, restoring to the files of the District Court papers claimed to be copies of the original files in this cause.

II. The court erred in overruling the demurrer to the bill of revivor filed herein.

III. The court erred in granting the motion of the claimants to strike from the files the pleas of the defendant to the bill of revivor.

IV. The court erred in denying defendant's motion to strike the amended petition from the files.

V. The court erred in granting the motion made by the claimants, at the hearing of the cause, to amend the petition by adding immediately before the prayer for relief therein the words following, viz, "That the grant (hereinbefore correctly described, except as to date) to the lands described in this petition, and to which petitioners claim title and upon which they rely, was made by the captain-general of Cuba on February 20th, 1818, and has been altered so that it purports to have been made on January 10th, 1818."

263 VI. The court erred in ordering, adjudging, and decreeing that the grant by Cienfuegos, the captain-general of Cuba, to John Forbes and Co., made on the 20th day of February, A. D. 1818,

which was so altered as to appear to have been made on the 10th day of January, A. D. 1818, for the lands described, was a valid, just, and binding title against the United States.

VII. The court erred in decreeing that the petitioners herein were entitled to receive from the United States a patent for all the described tract of land not sold or otherwise disposed of by the United States, and entitled to enter any of the public lands of the United States, liable to private entry at one dollar and a quarter per acre, to an amount equal in extent to that which has been sold by the United States within the boundaries of the described tract, according to the 6th section of the act of Congress approved June 22nd, 1860.

VIII. The court erred in deciding that a claim for lands in West Florida, by virtue of a grant made by the captain-general of Cuba on the 20th day of February, 1818, could be confirmed under the provisions of the act of Congress approved June 22nd, 1860.

IX. The court erred in deciding that a grant of lands in West Florida, made by the captain-general of Cuba, since the 24th day of January, 1818, was not null and void by virtue of the 8th article of the treaty between the United States and the King of Spain of the 22nd day of February, 1819.

X. The court erred in overruling the exception to the report of the master that there had been 1,190,495.45 acres of land within the boundaries of the grant as described in the petition herein disposed of by the United States.

J. N. STRIPLING,
U. S. Atty.

(The foregoing is endorsed as follows:) "U. S. District Court, So. District of Florida. Dalcour et al. vs. The United States. Assignment of errors. Filed April 8th, 1905. E. O. Locke, clerk."

264 *Prayer for appeal and allowance.*

In the District Court of the United States, Southern District of Florida.

THEODORE DALCOUR AND OTHERS, HEIRS OF John Forbes, deceased; Fanny W. Innerarity and others, descendants and heirs of James Innerarity; and Victoria Innerarity and others, descendants and heirs of John Innerarity,
vs.
THE UNITED STATES.

The defendant, the United States, conceives itself aggrieved by the decree made and entered herein, and hereby appeals from said order and decree to the Supreme Court of the United States and prays that this appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said Supreme Court of the United States.

And defendant states that the reasons for said appeal are specified in the assignment of errors filed herewith.

Jacksonville, Fla., April 8th, 1905.

J. N. STRIPLING,
U. S. District Attorney.

It is ordered that the appeal be and the same is hereby allowed as prayed. Done and ordered in open court this Jacksonville, Fla., April 8th, 1905.

JAMES W. LOCKE, *Judge.*

(The foregoing is endorsed as follows:) "U. S. District Court, So. District of Florida. Theodore Dalcour et al. vs. United States. Prayer for appeal and allowance. Filed April 8th, 1905. E. O. Locke, clerk. Ent. minutes, p. 297."

* * * * * * *

287 A.

La Casa de Forbes y Compañía, 1829.

Filed in evidence and marked "Exhibit 3–A."
Dec. 30, 1903.

R. B. ARCHIBALD,
Spl. Master.

288 A.

Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

EXMO. SOR.: Don Juan Forbes, socio y director de la casa de Forbes y Compañia, establecida en la plaza de Pensacola en virtud del R^l^ privilegio, p^a^ hacer su giro mercantil y especialm^te^ con los Indios de aquella provincia ante V. E. del modo mas conforme parezco y digo; que durante los movimientos y acciones de la última guerra tenida entre los Indios americanos y los súbditos ingleses de la Gran Bretañia, han padecido nuestros intereses, asi en fincas rurales, como en almacenes, efectos &^a^ mas ayá de lo que cabe en toda exageracion. Muchos de los
289 esclavos pertenecientes á la sociedad fueron sublevados y escondidos por los Indios mientras el Coronel Nicholes permaneció alli, y aunque el Gobierno de Pensacola, cerciorado del hecho, reclamó el violento despajo de los siervos, todo fué en vano porq^e^ no se llegaron á devolver.

Para facilitar su restitucion sin q^e^ el R^l^ erario sufriera una pérdida, á la cual estaba, y está responsable habilitó ni sociedad, barcos p^r^ diversas ocasiones costiados de su propio peculio con el único fin de reclamarlos.

En el primero q^e^ salió con el mencionado objeto, mandó el Gobierno en comision al capn. del Regimiento de la Luisiana, D. Benigno Calderon, en union de ostros oficiales.

Posterior á esto pr. dos ocasiones, á personas particulares, para q^e^ los empleados públicos no se separasen de sus destinos; pero el resul-
290 tado de las tales misiones fueron siempre no conseguir la devolucion de las cosas despojadas. La misma casa diputó á Edunicino Doyle y á Guill^mo^ Hambley para el precitado fin dándole gratificaciones considerables por su trabajo, é indemnizando al último la pérdida que sufrió de quanto tenia.

A mas de esto, Woodbine instigó á los Indios, tambien de quien se hizo jefe á robar negros, y tuvimos que perseguirle formandole proceso criminal en provid^{a}, lo q^{e} motivó unos gastos extremados sin buen suceso, p^{r} q^{e} tuvo arte ó arvitrio de escaparse de manos de la justicia p^{r} manera q^{e} todos los esfuerzos y sacrificios hechos p^{r} la casa p^{a} salvar al gobn^{o} de
estas pérdidas, solo han servido para aumentarlas.
291 En aquel mismo tiempo de desórden y confucion, se llevaron los citados Indios como mil bestias de la propiedad de la comp^{a}, perdiendo en otra parte treinta y ocho caballos y dos mulas; y por ultimatum una cuadrilla de ellos mismos incendieron los almacenes de la casa en Apalachicola cargando con once esclavos nuestros, con toda la bayada, caballerías y demas utensilios, y enseres q^{e} allí había, sin perdonar

292 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

y en calidad de prisioneros á Doyle y Hambley, quienes, con razon y justicia, reclaman á la casa los daños y perjuicios personales q^{e} han experimentado con tan extraños como inauditos procedimientos.

Tantas pérdidas, en q^{e} incluyendose el trabajo de los negros, capitales ó intereses del dinero, no baxan p^{r} un cálculo moderado de cien mil p^{s}, debe indemnizarlos este superior Gob^{o} á quien está sujeto el de Pensacola, ya sea con numerario, ó ya compensando á mi sociedad con otra cosa equivalente.

293 [SEAL.] [Flourishes.]

Los quebrantos son positivas, son constantes, y basta hecharse á la vista la correspondencia q^{e} ha llevado sobre el particular el comand^{te} de la provincia con esta capitanía gral.; p^{a} que no se dude, de mi veraz exposicion; sobre q^{e} tambien puede dar una plenisima comprobacion con el agrimensor Gra^{l} Cap^{n} Don Vicente Sebastian de Pintado, D. Fran^{co} de Arroyo Agregado á la secretaría de esta intend^{a} y con otros individuos de igual concepto qe han estado en Pensacola al servicio de S. M.

Así pues, considerando p^{r} una parte quan dificultoso será pagarme en dinero sonante y con-

294 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

tante, como es muy debido, las cien mil p^{s} á q^{e} incocusamente es acreedora mi casa p^{r} la notoria escases de numerario que padecen las cajas públicas; y por otra q^{e} los muchos servicios q^{e} ha hecho en todo tiempo al Soberano con cuyos medios y recursos se puede decir que se ha sostenido la tropa de aquella guarnicion; teniendo aun todavía pendiente y
p^{r} recibir mas de ocho mil p^{s} aumentaria considerablemente la
295 poblacion de la provincia sin compensacion de la citada suma se adjudica el pleno dominio á la precitada comp^{a} de Forbes p^{r} quien represento un paño ó giron de tierra q^{e} se halla vacante, principia

del arroyo conocido, por de agua dulce en el río de Apalachicola y sigue en derechura al oeste hasta el río Chata Hacha, tamando el curso de este río hasta su embacadura en la Bahia de la Isla de Rosas, y dirigiendose hacia el este p^r la rivera de la misma bahia, y de la mar hasta el límite de las tierras al oeste del río Apalachicola ya cedidos p^r los Indianos á nuestra casa siguiendo los límites de el oeste de estas tierras, y subiendo el curso del mismo río hasta el punto de salida.

296 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

Conozco muy bien que el citado terreno, q^e en muchísima parte no es cultivable, no compensa ni la cuarta parte de la cantidad que reclamo; p^r q^e el tamaño de las pérdidas y quebrantos experimentados monta como ya he dicho á mas de cien mil p^s, pero como ha de ser, esto será otro nuevo motivo q^e aumente el amor y constante lealtad q^e yo y mis socios profesamas á nuestro Soberano, no queriendo q^e S. M. sienta el detri-
297 mento de tan cuantioso desembolso; contentandonos con q^e solo el tiempo y nuestra industria pueda hacer producible en beneficio de la misma provincia y aumento de su real patrimonio. Por tanto—

A. V. E. sup^co q^e en merito de lo recomendado; del q^e ofrece la correspondencia entre la comandancia de Pensacola y este gobierno sobre los perjuicios narrados; y el de la informacion q^e incontinente ministrare para comprobarlos, se sirva adjudicar en dominio pleno á la sociedad de Forbes y Compañía de q^e soy jefe, y por quien represento el terreno ó paño de tierra q^e queda designado bajo los puntos y lindaros

298 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

explicadas librandose las providencias necesarias q^e radique la posecion con lo cual nos daremos por satisfechos, contentos y compensados de las reclamaciones de perjuicios y indemnizaciones demandadas que así es justicia q^e pido juramento de no ser de malicia y lo necesario, &^a.

Don PEDRO ANT^o DE AYALA.

JUAN FORBES.

299 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

HABANA *y enero 5 de 1818.*

Para proveer lo que corresponda llevase al asesor gener^l.
CIENFUEGO.

MIGL. MENDEZ.

En la Hab^a en dicho día lo hice saber á D^n Juan Forbes.

MENDEZ.

HABANA *y enero 5 de 1818.*

Vistos: Recibase la informacion que promueve la casa de Forbes y Compañía en su antecedente insta. por ante el presente Ex^mo^, á quien se comete impartiendose los auxilios q^e^ sean necesarios

300 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

en la forma política de estilo; y evacuada traiganse con los antecedentes que recitan. Asesoria, veinte y cuatro reales pagados.

DEL MONTE.

CIENFUEGO.

MIGL. MENDEZ.

En dh^o^ día, mes y año lo hice saber á D^n^ Juan Forbes, doy fé.

MENDEZ.

en. 7

HABA. *y feb^o^ 14 de 1818.*

Ases^a^, 10 r^s^ pag^s^. Cumplase sin perjuicio de esta jurisdiccion.

P. M. RAMIREZ. CAMPUSANO.

MIG^L^ MENDEZ.

301 En la ciudad de la Havana en { siete / catorce } de { enero / febrero } de mil ochocientos diez y ocho, en virtud de lo mandado, pasé á la casa de la habitacion de D^n^ Fran^co^ Gutierrez de Arroyo, secretario, que fué de la intendencia que hubo en la Florida Occidental y actualmente agregado á la de esta superinten^a^ general, subdelegada de quien recibí juramento que lo hizo en la forma dispuesta por dro. bajo del cual ofreció decir verdad y examinado al tenor del escrito de la foxa primera que produxo

Juan Forbes

D. (Colin Mitchell como apoderado de la casa de Forbes y Campañía del comercio de Panzacola) despues de bien enterado de su tenor,

302 dixo que con motivo de haber residido en aquella plaza desde febrero de mil ochocientos seis, desempeñando su empleo puede asegurar como testigo ocular que los hechos en que descansan los que le preguntan para demandar la indemnizacion de perjuicios, son tan ciertos y tan positivos, que no habrá persona imparcial de aquella provincia que dexe de confesarlos; que las pérdidas fueron enormes y así en la citada plaza como en la factoria que tenían establecida los que le preguntan en los ríos de Apalachicola y Perdido; que los Indios sublevaron los esclavos que tenían en las fincas escondiendolos mientras el Coronel Nicholes permaneció allí

303 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

sin que bastasen los reclamos del gobierno para que se devolvieran ni las comisiones que posterior á esto se dieron al capitan del regimiento de la

Luisiana, D. Benigno Calderon, en union de otros oficiales ni á diversas personas particulares; de manera que en concepto del reclamante no está exagerada la suma de cien mil pesos que se demandan por los perjuicios narrados comprendiendose como mil y pico de bestias bolladas,
304 cavallerías y demas utensilios y menesteres que le robaron á la casa de Forbes los indicados Indios de que no ha recibido la mas mínima compensacion de nuestro gobierno, siendo la única que en Panzacola ha hecho servicios importantes al Soberano. Y responde que lo que dexa declarado es la verdad en cargo de su juramento, que es de edad de cincuenta y cinco años, que no le tocan las generales de la ley de que fué instruido se le leyó y expuso estar conforme y firmó, de que doy fé.

FRAN^co^ GUTIERREZ DE ARROYO.

ANTONIO MIGL. MENDEZ.

305 En la ciudad de la Havana. En el mismo día, mes y año pasé á la casa de D. Vicente Sebastian Pintado, agrimensor general por S. M., de quien recibí juramento, que hizo segun dro., ofreció decir verdad y examinado, dixo que con motivo á su permanencia en Pensacola sabe y le consta que durante los movimientos y acciones entre los Indios americanos y los súbditos ingleses de la Gran Bretaña padició la casa de Forbes y Compañía, establecida allí con real permiso para la trata con las tribus indias perjuicios de la mayor entidad; en Panzacola, Perdido y Apalachicola por los eventos y causas que espresa y aunque el declarante no puede graduar á quanto

306 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

habían ascendido los años y perjuicios, considera que debe ser una suma considerable; que igualm^te^ han hecho importantes servicios en todos tiempos á la tropa de aquella guarnicion y al Rey, Nuestro Señor, sobre que el secret^o^ de este Gobierno debe haber constancia. Y responde que quanto dexa expuesto es la verdad en cargo del juramento prestado que es mayor de edad, que no le tocan las generales de que fué instruído, se le leyó y expresó estar conforme y firmó, de que doy fé.

VICENTE SEBAST^n^ PINTADO.

ANTONIO MIGL. MENDEZ.

307 En la ciudad de la Havana, en il mismo día, mes y año, pasé á la casa de la habitacion de D. Fran^co^ Guerrero, capitan del Regimiento de la Luisiana, de quien recibí juramento, que hizo en la forma dispuesta por derecho, baxo del cual ofreció decir verdad y examinado como el antecedente, dixo que con ocasion á su dilatada permanencia en Panzacola sabe y le consta que durante los movimientos y acciones entre los Indios americanos y los súbditos ingleses de la Gran Bretaña padeció la casa de Forbes y Compañía, establecida allí con real permiso para
308 la trata con las tribus indias perjuicios de la mayor entidad; que durante la permanencia del Coronel Nicholes, los mismos Indianos se sublevaron y escondieron porcion de negros, sus esclavos, aconteciendo lo propio cuando Nandbine se hizo jefe de ellos y los compelió á robar ne-

gros y hacer otros atentados de gravedad; que se llevaron el número de bestias, bolladas y caballos, que se designa arruinando las factorías que tenían establecidas en los ríos de Apalachicola y Perdido, que aunque se hicieron varias aclamacion por aquel Gobierno para la restitución de los cuantiosos bienes despojados á Forbes y Compañía nada se consiguió,

309 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1919.

estando la sociedad en el caso de reclamarlos al Soberano; que es inquestionable que podrán ascender á la suma de cien mil pesos que se demandan por ellos por un cálculo de aproximacion no menor que los importantes servicios que los que le preguntan tienen hechos en todos tiempos á la tropa de aquella guarnicion y al Rey, Nuestro Señor, sobre que en la secretaría de este Gobierno debe haber constancia. Y responde que
310 cuanto dexa expuesto es la verdad en cargo de su juramento que es mayor de edad, que no le tocan las generales de la ley de que fué instruído se le leyó expuso estar conforme y firmó, de que doy fé.

FRAN^co GUERRERO.
MIGL. MENDEZ.

311 En la ciudad de la Habana, en el citado día, mes y año, en virtud de lo mandado, pasé á la casa de la habitacion de D. Fran^co Morales, capitan del Regimiento de la Luisiana, de quien recibí juramento que lo hizo en la forma dispuesta por derecho, baxo del cual ofreció decir verdad y examinado en el órden que los antecedentes, dixo que con motivo de haber residido mucho tiempo en la Plaza de Panzacola y principalmente durante los movimientos y acciones entre los Indios americanos y los súbditos ingleses de la Gran Bretaña, sabe y le consta que la casa de Forbes y Compañía, establecida allí con real permiso para tratar con las
312 tribus indias, padeció los perjuicios que se relacionan en el escrito de la primera, pues es evidente que durante la permanencia del Coronel Nicholes los mismos Indios se sublevaron y escondieron porcion de negros, sus esclavos, aconteciendo lo propio cuando Nandine se hizo jefe de ellos, y los compelió á robar negros y hacer otras atentadas de gravedad; que se llevaron el número de bestias, bolladas y caballos, que se designan arruinando las factorías que tenían establecidas en los ríos de Apalachicola y Perdido, que aunque se hicieron
313 varias aclamaciones por aquel Gabierno para la restitucion de los cuantiosos bienes despojados á Forbes y Campañía nada se consiguió; estando la sociedad en el caso de reclamarlos al Soberano; que es inquestionable que podrán ascender á la suma de cien mil pesos que se demandan por ellos por un cálculo de aproximacion no menos que los importantes servicios que los que preguntan tienen hechos en todos tiempos á la tropa de aquella guarnicion y al Rey, Nuestro Señor, sobre que en la secretaría de este Gob^no debe haber constancia. Y responde que cuanto dexa expuesto es la verdad en cargo de su juramento que es mayor de edad, que no le tocan las

314 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

generales de la ley de que fué instruído se le leyó y expuso estar conforme y firmó, de que doy fé.

FRN^co DE P^la MORALES.
ANTONIO MIGL. MENDEZ.

HABANA y { en^o 10 / feb^o 20 } de 1818.

Vistos: Con los antecedentes que se mandaron pasar á la consulta en providencia del seis del corriennte; teniendo en consideracion su
315 mérito y el que produce este expediente en que la casa de Forbes y Compañía, establecida con real permiso en la Plaza de Panzacola para hacer el comercio con las tribus indias, reclama la indemnizacion de cien mil pesos que ha experimentado en pérdidas efectivas, daños y perjuicios durante los movimientos y acciones entre los mismos Indios americanos y los súbditos ingleses de la Gran Bretaña mientras permaneció allí el Coronel Nicholes y cuando Nandbine se hizo jefe de aquellos, instigandolos á cometer toda clase de robos sobre que en aquella época se hicieron los debidos reclamos sin conseguirse que se devolvieron á la citada casa de Forbes y Compañía los

316 Sello tercero.

[SEAL.] Dos reales. Años de 1818 y 1819.

negros y demas animales y bienes de que injustamente fué despojado; y por otro extremo que el paño de tierra q^e pide se le adjudique en pago ó compensacion de la expresada cantidad nunca puede ascender á esta suma en una provincia de cortisima poblacion en que los terrenos permanecen incultos sin haber quien se dedique á su cultivo segun los informes que se han tomado entre ellos el del agrimensor general de S. M., D.
317 Vicente Sebastian Pintado; y que entrando en su dominio D. Juan Forbes, jefe principal de aquella sociedad, podrá benificiarla y atraer colonos que se establezcan en ella justificando á favor del estado lo que hoy existe yermo y abandonado, cuyas consideraciones movieron el digno ánimo de S. M., para que en real cedula de diez de agosto de mil ochocientos quince ofreciere terreno á los que quisieran situarse en la Isla de Puerto Rico como el medio mas interesante q^e puede emplearse para el aumento de una poblacion desde luego. Dixo S. Exa. que en uso de las facultades que le competen aplicaba y aplicó el mencionado
318 terreno á D Juan Forbes y Compañía bajo de los puntos y límites que se designan en el escrito de la foxa primera quedando por lo mismo privado de todo derecho á reclamar del real erario las pérdidas y perjuicios que hubiere experimentado, pues con su valor, sea cual fuere queda compensado de todo y chanceladas sus demandas de indemnización que había establecido; tal comandante de la citada Plaza de Panzacola en virtud de esta resolucion lo ponga en quieta y pacífica posecion del mencionado ter-

rreno; á cuyo logro Su Exa. mandando que á la misma casa de
319 Forbes se le den los testimonios que necesite, arduvandose el original asesoria treinta y dos rr^{s}. pagados.

DEL MONTE.
M.

Pag^{s}.
Cienfuego. MIGL. MENDEZ.

En dho. día lo hize saber á D. Juan Forbes, doy fé.
MENDEZ.

320 Un quartillo.

[SEAL.] Sello quarto, un quartillo, años de mil ochocientos diez y ocho y diez y nueve.

Pase al Sr. Asesor General, Cienfuegos.

HAB^{a} y dis^{e} 18 de 1818.

EX^{mo} SOR: La casa de Forbes y Compañía, del comercio de Panzacola, por medio de su apoderado en esta ciudad á V. E. dice: Que en medio del trastorno y confucion que ha ocasionado en los archivos públicos en aquella plaza, la entrada y posecion que de ella tomaron las armas americanas ha conservado el auto ó despacho original que expidió el Sr. Coronel D. José Masot, comand^{te} político y militar en la
321 provincia de Florida á conseq^{a} del que le libró este Sup^{r} Gobierno sobre indemnizi^{e} ó perjuicios reclamados por los exponentes; y conveniéndoles que de él se le den dos testimonios para agregar uno al exped^{te} que existe en Penzacola y otro para conservarlo.

A V. E. suplica se sirva mandar que por el exm^{o} Gobierno se le provehan de las dos compulsas q^{e} solicita q^{e} es gracia q^{e} implora. Hab^{a} y dis^{e} 17 de 1818.

COLIN MITCHELL.

HABANA y dis^{e} 18 de 1818.

Vistos: P^{r} presentado el documento que se expresa provean á la casa de Forbes y Compañía del testimonio que solicita: asesoria diez y seis rr^{s} pagados.

DEL MONTE.
M.
CIENFUEGOS. MIGL. MENDEZ.

322 En dho. día, mes y año lo hice saver á D. Colin Mitchell, doy fé
MENDEZ.

D. José Marrot, coronel del real cuerpo de (ingenieros) artillería, comandante político y militar de la provincia de la Florida Occidental, subdelegado de la real hacienda en ella, etc.

Por quanto y en cumplimiento del superior decreto que antecede del Exmo. Señor Capitan Gral. de esta provincia de diez del presente mes y año por el que por vía de indemnizacion, concede á la casa de Forbes y Compañía un paño de tierra cituado entre el Rio de Apalachicola
323 al E. el Chatahache al O. el mar al S. y al N. por una línea que ha de empezar enfrente del arroyo conocido por el nombre de Aguadulce, ó Sweet Water Creek, situado en la parte oriental del Apalachicola como á tres millas y media al N. del paraxe conocido con el nombre de Allmus Bluff y ha de correr al O. hasta encontrar el Chatahache y desde allí seguir las sinuosidades de este río hasta su desague en

la Bahia de Santa Rosa, de allí siguiendo la rivera este de este hasta el mar formando su alta marca los límites del sur hasta encontrar con los de la tierra que ya tiene adquirida la dha. casa al O. del Apalachicola y empieza en frente de la punta tambien.

324 Un quartillo.

[SEAL.] Sello quarto, un quartillo, año de mil ochocientos diez y ocho y diez y nueve.

O. de la Isla de San Vicente desde allí siguiendo los límites de dhas. tierras hasta el Apalachicola luego el curso y sinuosidades del citado río hasta encontrar el punto de partida de la línea que sirve de lindero al norte frente al ya denominado arroyo de Agua Dulce. Par tanto y en cumplïmiento del ya citado decreto de S. Exa. de diez del corr^te^ año pongo en posecion á la referida casa de Forbes y Compañía de la suerte de tierra descrita; y en su consequencia le declaro é imparto entero y directo dominio á la expresada compañía de la tierra que menciona para

325 Un quartillo.

[SEAL.] Sello quarto, un quartillo, años de mil ochocientos diez y ocho y diez y nueve.

que como propiedad suya la disfrute, posea, renda ó enagene en los términos que mejor le convenga. Eu fé de lo cual mando despachar el presente firmado de mi mano, sellado con el sello de mis armas y refrendado por el infrascrito secretario de este Gobierno y subdelegacion á veinte i tres de { enero / marzo } de mil ochocientos diez y ocho.

Lugar del sello.

JOSÉ MASSOT.
CARLOS REGGIO.

Es conforme a un original que devolvi á la parte que me remitió. Y en virtud de lo mandado pongo la presente. Havana y diciembre diez y nueve de mil ochocientos diez y ocho años. Testado; ingenieros, no vale. Entre reng^s^ á diez. Em^de^ Enero, vale.

[RUBRICA.] MIGL MENDEZ.

326 Los escribanos del Rey, Nuestro Sor., de su Real Colegio de esta ciudad, que aquí signamos y firmamos rectificamos y damos fé que D. Miguel Mendez, de quien aparece tambien autorizado el testimonio que antecede, es también Excr. de S. M. teniente del mayor de Gob^no^ y cabildo fiel legal y de confianza, usa y exerce con aprobacion y á su semijantes siempre se les ha dado entera fé y credito en ambos juicios. Habana y dise. diez y nueve del mil ochocientos diez y ocho años.

[RUBRICA.] JUAN DE DIOS CORONA.
[RUBRICA.] JOSÉ NUÑO DE CUETO.
[RUBRICA.] JOSÉ MANUEL NAVARRO.

(Endorsed:) 210–225–LI. U. S. District Court, Southern District of Florida. Dalcoure *vs.* U. S. Exhibit 3–A. Filed Mar. 17, 1904. E. G. Locke, clerk.

327 B.

Opinion of the commissioners on the claim of John Forbes & Co. on the west side of the River Apalachicola.

This grant for land on the west side of the River Appalatchcola, to the house of John Forbes & Co. appears to have been made on the same considerations with those on the east side, with this difference—that there is an acknowledgment of the intendant that the royal treasury was responsible to the said house for the losses sustained. The land lies in West Florida, and a title is made to the grantees conveying a full and direct property. In this case, as in the first mentioned, there is no negotiation with the Indians for a conveyance, although they are represented as having been guilty of the robberies by which serious losses were sustained. The reasons of this difference are not understood by the undersigned commissioners.

The only question to be decided in this case is whether so large a grant for such purposes could be made without a reference to the King, as was done in relation to the claim of Bastrop and others.

Upon this point we beg leave to refer to our general report upon large claims for an explanation of our views. They are general in their character, as the material out of which they were formed are limited and imperfect. As claims of a similar description have frequently been reported to Congress for their examination, they are believed to be better prepared to decide them than the undersigned commissioners. They therefore respectfully submit the case to their determination.

(Signed) SAML. R. OVERTON,
JOS. M. WHITE,
CRAVEN P. LUCKETT.

NOTE.—Vide first volume, page 414 to 423, for the title papers.

First volume. Record of proceedings. Secretary's book. Containing a record of the proceedings of the commissioners for the settlement of claims to lands in the Territory of Florida. July 15th, 1822.

328 WEDNESDAY, *9th June, 1824.*

The board met. Present, the Honbl. Joseph W. White & the Honbl. Craven P. Luckett.

The claim of John Forbes and Company to a tract of land, undefined in quantity, lying west of the river of Apalachicola was then taken up for examination, and the following title papers and testimony exhibited in support thereof, to wit:

A copy of a letter from John Forbes, partner and principal of the house of John Forbes & Co. to the captain-general of Cuba and the two Floridas, praying in the words and figures following, to wit: "Excellent Sir, John Forbes, partner and principal in the house of John Forbes & Co., established in Pensacola by royal license for the purpose of transacting mercantile business, more especially with the Indians of that province, respectfully showeth to your excellency that during the late warfare between the American Indians and the subjects of Great Britain our interest suffered much as well as in stock as in stores, effects, &c.; indeed, more than can be exaggerated. Many slaves belonging to the company

were carried off and concealed by the Indians during the residence of Colonel Nichols; and though the government of Pensacola, upon being made acquainted with the facts, claimed back their servants, so violently seized upon, it was all in vain; they were never returned. In order to facilitate their restitution, without the royal treasury, although it alone was, and is responsible, my house fitted out at sundry times and with our own pecuniary means, vessels for the sole purpose of demanding them. In the first which sailed for the aforesaid object was Captain Dn. Benigno Calderon, and other officers, with a commission from the Government. Posterior to this, on two other occasions, other persons were commissioned, in order to avoid the withdrawing of public officers from their duties. But all these missions failed in their object of procuring a restitution of the things that were robbed. The same house deputed Edmund Doyle and William Hambly for the same end, giving them considerable gratifications for their
329 trouble and indemnifying the last named for the loss which he suffered of all he possessed. Besides all this, Woodbine induced the Indians, of whom he also got to be named a chief, to carry off negroes, and we had to prosecute him criminally in New Providence, which occasioned us much expence, without being successful, for he had the art or means to escape from the hands of justice. Thus all the efforts and sacrifices made by the house to save the Government from these losses have only served to augment them. At that time of disorder and confusion the said Indians carried off about a thousand head of cattle belonging to the house, which also suffered a loss in another quarter of thirty-eight horses and two mules, and lastly a band of the same set fire to the stores belonging to the house on the Apalachicola, seizing at the same time upon eleven of our slaves, and all the horses, cattle, utensils, and articles there found, without leaving anything whatever behind, and also as prisoners Doyle and Hambly, who justly and reasonably claim of the house the injury and personal prejudice they sustained by such extraordinary and unheard of proceedings. So many losses, including the labor of the negroes, capital, and interest of money, which do not amount to less, on a moderate calculation, than one hundred thousand dollars, should be indemnified by the superior Government to which that of Pensacola is subordinate, either in money or by a compensation to my house of some other equivalent. The losses are clear and positive, and on inspection of the correspondence between the governor of the province and the captain-general's office will suffice to confirm the truth of my exposition; and also on this subject ample proofs can be given by the surveyor-general, Captain Dn. Vicente Sebastian Pintado, Dn. Francisco de Arroyo, of the office of the secretary of the intendency, and other equally distinguished individuals who were in Pensacola in His Majesty's service. Therefore, considering on one hand how difficult it is to pay me in ready money, as ought to be the case, the hundred thousand dollars, to which my house is so incontestibly entitled, on account of the great scarcity of cash in the public coffers; and on the other hand,
330 that besides the many services our house has rendered at all times to His Majesty, with whose means and resources, it may be paid, the troops of the garrison have been sustained, and having still pending and to receive more than eight thousand dollars, we could augment considerably the population of the province without compensation of the

aforesaid sum, if an adjudication were made in full property to the said house of Forbes & Co., which I represent, a tract or round of land which is vacant, and which commences from the creek known as Sweetwater Creek on the River Apalachicola, and runs directly west as far as the River Choctawhatche, following the course of the said river to its mouth, on the Bay St. Rosa, thence eastward winding along the shore of said bay and the sea to the boundary of the lands on the west of the Apalachicola, formerly ceded to our house by the Indians, and running along the western boundary of said lands up the said river to the point of departure. I am aware that this land which for the greater part is not capable of being cultivated will not compensate for the fourth part of the sum which we claim, because the amount of our losses exceeds, as I have said, one hundred thousand dollars, but, however it may be, this will be an additional incentive to the loyalty and obedience which we profess to our sovereign, and we do not wish that His Majesty should feel the detriment of such a large reimbursement, contenting ourselves with the hope that time and our industry may be productive of benefit to the said province, and augmentation to the royal treasury patrimony. Wherefore I pray your excellency that in virtue of the recommendations contained in the correspondence between the commandancy of Pensacola and this Government concerning the above-mentioned losses; and the information which I shall shortly furnish in proof of them, you will be pleased to adjudicate in full property to the house of Forbes & Co., of which I am principal, and which I represent, the tract of land above designated, according to the points and boundaries explained, delivering the necessary title of possession, with which we shall rest satisfied, content, and compensated for the claims of losses and indemni'es demanded, &c., &c.—(Signed) Dn. Pedro de Antonia de Ayala. John Forbes." Also a copy of a decree of the captain-general,
331 dated Havana, 5th January, 1818, as follows: "To be shown to the assessor-genl. that he may advise that which corresponds. (Signed) Cienfuegos. Miguel Mendez." Also a copy of notification to John Forbes (signed) Mendez. Also a copy of decree of the captain-general, dated Havana, 5th of Jan., 1818, as follows: "Having been inspected let the petition of the house of John Forbes & Company, above mentioned, be received at the notaries' office, who is charged therewith, and let the testimony prayed for be taken, clothed with the usual forms, which done let them be returned along with the foregoing. (Signed) Cienfuegos. Del Monte. Miguel Mendez." Also a copy of a notification of the same to John Forbes on the same day by Miguel Mendez. Also a copy of a decree of Ramirez, the intendant general, dated Havana, 7th January, 1818, as follows: "Let it be done without prejudice to this jurisdiction. (Signed) Ramirez, Campuro, Miguel Mendez." Also a copy of a deposition in the following words, to wit: "I went to the house of Francisco Guiterres de Arroyo, former secretary of the intendancy of West Florida, and now belonging to the intendancy-general subdelegated, who, having taken the oath, usually prescribed to tell the truth, and being examined as to the tenor of the petition of John Forbes, after having carefully perused it, declared: That having resided in Pensacola from February, 1806, in the discharge of his office, he could testify as an ocular witness that the acts alleged, for which an indemnity is demanded, are so certain and positive that no impartial

person in that province can refuse to acknowledge. That the losses were enormous, not only in Pensacola but also in the stores which the demandants held on the River Apalachicola and Perdido; that the Indians carried off the slaves on their establishments, concealing them during the residence of Colonel Nichols in that quarter, notwithstanding the remonstrances of the Government on the commissions given afterwards to Dn. Benigno Calderon, captain of the Louisiana Regiment, and other officers as well as to various individuals; so that in the opinion of the department there is no exaggeration in the sum of one hundred thousand dollars asked for as an indemnity for the
332 aforesaid losses, comprehending more than one thousand head of cattle, yokes of oxen, draft horses, and all the utensils and other articles which were taken off from the stores of Forbes by the aforesaid Indians, for which not the smallest compensation has been received by the said house; it having also been the only one in Pensacola which has rendered important services to the sovereign. The respondent likewise declared that the above deposition is the whole truth in virtue of oath; that he is fifty-five years of age; that the dispositions of the law do not affect him, &c., &c. (Signed) Franco. Guiteres de Arroyo. Before me, Miguel Mendez." Also a copy of another deposition as follows: "In the city of Havana, same day, month, and year, I went to the house of Dn. Vicente Sebastian Pintado, His Majesty's surveyor-general, who, having made to me the customary oath, to say the truth, and being examined in the same manner as the preceding deponent declared: That during his residence at Pensacola it has come to his particular notice that in the various conflicts between the American Indians and the subjects of Great Britain, the house of Forbes & Co., established there by royal licence for trading with the Indian tribes, suffered the most serious losses, as well in Pensacola as at the Perdido and Apalachicola rivers by the aforesaid events and causes; and although the deponent cannot state amount of these losses and injuries, he thinks they must be very considerable. That said house has rendered most important services at all times to the troops of that station, as well as to our Lord the King (ample proofs of which are to be found in the office of the secretary of the Government). The respondent affirms all this to be the truth in virtue of his oath, &c., &c. (Signed) Vincente Sebastian Pintado. Before me, Miguel Mendez." Also a copy of another deposition, as follows, to wit: In the city of Havana on the same day I went to the domicile of Dn. Franco. Guerrero, captain in the Louisiana Regiment, who, having made the usual oath and examined as above, declared: "That during his long residence in Pensacola he knew very positively that in consequence of the warfare between
333 the American Indians and his Britannic Majesty's subjects that serious losses were suffered by the house of Forbes & Co.; that at the time Col. Nichols was in that quarter the same Indians carried off and concealed a number of their negroes; that the same happened when Woodbine made himself their chief, and compelled them to steal away negroes, and commit other acts of atrocity; that they carried off the quantity of cattle, oxen, and horses specified, after destroying the stores which belonged to the said house on the rivers Apalachicola and Perdido; that though sundry steps were taken by the Government in order to procure the restitution of the immense property of Forbes & Co., no

pillaged, nothing was returned, so that the house was necessitated to claim the same of the Sovereign, who was responsible for them. That there is no doubt the losses sustained, do amount to the sum of $100,000, as well by an approximate calculation as for the important services which that house has ever rendered to the troops of that station, and to our lord, the King (proof of which may be found in the secretary's office of this Government). He also attests to the truth of the above, &c., &c. Francisco Guerrero. Before me, Miguel Mendez." Also, a copy of another deposition, as follows: "In the city of Havana, same day I went to the house of Dn. Francisco Moralles, captain in the Louisiana Regiment, who, having taken the usual oath, &c., declared, that having long residence in Pensacola, and chiefly during the warfare between the American Indians and the subjects of Great Britain, he well knows that the house of Forbes & Co. suffered the losses expressed in the first of the preceding documents, &c., &c. (The rest of the deposition is the same as the preceding). (Signed) Francisco de Paulo Moralles. Before me, Miguel Mendez." Also, a copy of the grant, or title in form, as follows: "Havana, 10th January, 1818. Having inspected the above, together with the preceding documents, which were ordered to be sent to the assessor by decree of the 6th instant. Taking into consideration the merits of the case, in which it appears that the house of Forbes & Co., established by royal permission in Pensacola for the purpose of trading with the Indian tribes, claims an indemnity of $100,000
334 for losses of various kinds sustained during the warfare between the American Indians and the subjects of Great Britain, and during the residence of Col. Nichols in that province, and also when Woodbine, making himself their chief, instigated them to commit all kinds of robbery, upon all which the necessary representatives were at that time made, without effecting a restitution to the said house of Forbes & Co., of any of the negroes, animals, or other property of which they were unjustly spoiled; and on the other hand considering that the tract of land which they ask an adjudication of, in payment and compensation of the aforesaid sum, can never equal that amount in a province of such small population where the lands remain without cultivation, and no one turns his attention to improve them, according to the information which his Majesty's surveyor-general Dn. V. S. Pintado has received; but that entering into the possession of John Forbes, principal partner of said house, he will have the means of turning the said tract to use, by introducing colonists thereon, and making beneficial to the State that which lies at present waste and abandoned; which considerations moves his Majesty, in a royal ordinance of the 10th August, 1815, to offer lands to those who were willing to establish themselves in the island of Porto Rico, as the most advantageous mode that could be employed for increasing population. Therefore, his excellency, making use of the faculties vested in him, has granted, and by these presents, does grant the said tract of land to John Forbes & Co. under the points and limits designated in the first of the preceding documents, the said house remaining without any right or claims upon the royal treasury for the losses and injuries it has sustained, and with the value of the said tract whatever it may be, remaining compensated for everything, and the demands of said house for indemnity canceled; and the governor of Pensacola, in virtue of this resolution, shall put it in quiet and peaceable possession of said tract, his excellency

ordering the necessary documents to be delivered to the said house and the original to remain in the archives. (Signed) Cienfuegos, Del Monte,
335 Miguel Mendez." Also, a copy of a petition of Dn. Colin Mitchel, agent of the house of Forbes & Co., as follows: "Excellent Sir: The house of Forbes & Co., of Pensacola, through their attorney in this city, respectfully represents that in the most of the confusion in the public archives of that place, occasioned by the entry of the American army, they have preserved the act, or original decree expedited by Dn [illegible] Masot, political and military governor of the province of West [illegible] in consequence of that issued by this supreme Government re[illegible] indemnity for losses claimed by this petition; and having occa[illegible] two copies of the latter, one of which to be annexed to the doc[illegible]ent existing in Pensacola, and the other for their own use, supplicate your excellency to order the same to be delivered, &c. (Signed) Colin Mitchel." Also, a copy of a decree thereon, as follows: "Havana, 18th December, 1818. Having seen by the foregoing document what it expresses, let the testimony prayed for by the house of Forbes & Co. be given to them. (Signed) Cienfuegos. (Countersigned) Del Monte, Miguel Mendez." Also, a copy of the act of possession given by Governor Masot, as follows: Don Jose Masot, &c., &c.: Whereas and in obedience to the above superior decree of his excellency, the captain-general of the province, of the 10th instant, by which, as an indemnity, is conceded to the house of Forbes & Co. a tract of land situated between the River Apalachicola to the east, and the Choctawhatchie to the west, the ocean to the south, and on the north by a line beginning opposite to the creek known by the name of Sweet Water Creek, situated on the eastern side of Apalachicola, about three and a half miles north of the bluff, known by the name of Alum Bluff, and running west to the Choctawhatchie, thence following the sinuosities of said river to its mouth, on the Bay of St. Rosa, thence winding along the eastern shore of the same to the sea, the high waters of which form the limits to the south, and till the line joins the limits of the lands formerly acquired by the said house on the west of the Apalachicola, in front of the island of St. Vincent, thence
336 running along the limits of said lands to the river Apalachicola, then the course of said river to the point of departure of the line serving as the northern boundary line, opposite the aforesaid creek, called "Sweet Water Creek." Therefore, and in obedience to the said decree of his excellency of the 10th instant, I put the said house of Forbes & Co. in possession of the tract of land above described and in consequence declare and impart to them full and direct property in the said land, so that they may the same enjoy, possess, sell, or transfer as they may judge proper, &c. Pensacola, 23d January, 1818. (Signed) Jose Masot. (Countersigned) Carlos Reggio. All which foregoing documents are certified to be true copies by Miguel Mendez, second escribano of the Government and Cabildo, on the 19th December, 1818, whose signature as such is accredited on the same day by Roman Alvarez, Jose de Galinor, and Lorenzo Hodro, notaries public of the city of Havana. Also, an original order of ejectment given by Governor Callava, in the following words, to wit: "Dn. Jose Callava, civil & military governor, &c., &c. In consequence of the renewed application of John Innerarity, esq., I order and command, all and singular, person or persons who may have occupied or established themselves on the

lands or territory belonging to Messrs. John Forbes & Company, situated and bounded by and between the rivers Choctawhatche and Apalachicola, unless by special permission of, or agreement with the said Messrs. John Forbes & Co., that they shall definitively remove from the same within the peremptory term of ten days after the notification of this order, and in case of noncompliance within the time specified they will be proceeded against according to law. The notification and execution of this order is entrusted to Mr. Jonathan Bunker, and for the better confirmation thereof it is to be trasnslated into English by Dn. Jose Ignacio Cruzat, which translation he is to extend and sign in continuation of this my order. Given in Pensacola, signed with my hand, sealed with the shield of my arms, and countersigned by the undersigned secretary of this Government, this 8th day of October, 1819. (Signed) Jose Callava. (Countersiged) Carlos Reggio."

337 The signatures to the transcript from Havana and to the foregoing order of ejectment proven by Joseph E. Caro by comparison of handwriting. See the letters of Manuel Gayoso de Lemos and Marques de Caso Calvo, governors-general of Louisiana and West Florida, recorded at pages 383 & 384.

Charles Evans, being sworn, saith that on the return of the grant for said tract of land made to the house of John Forbes & Co. by the captain-general of the island of Cuba and both the Floridas, there was a decree of Governor Masot putting the grantees in possession thereof, which possession they have held ever since; that a number of improvements have been made on the different parts of the said tract by persons claiming under the grantees; that in the year 1819, at the request of John Innerarity, Governor Callava issued an order ejecting a number of intruders, some of whom were imprisoned for disobedience of the order. And further saith not.

Desiderio Quina, being sworn, saith that he is acquainted with all the foregoing facts stated by Mr. Chs. Evans, and further saith that the said house, and those claiming under it, have held actual possession of the said tract of land ever since the year 1818, by virtue of a grant from the captain-general of the island of Cuba and the two Floridas and a decree of possession given by Governor Masot. And further saith not.

And then the board adjourned.

NOTE.—Vide page 271 of the 2d volume for the opinion.

Office of the United States surveyor-general for the district of Florida.

I, Edmund C. Weeks, United States surveyor-general for the district of Florida, do hereby certify that I am the lawful custodian of the original records of the board of commissioners appointed for ascertaining claims and titles to lands within the Territory of Florida under the act of Congress approved May 8th, 1822, and acts amendatory and sup-

338 plemental thereto, and such original records are in the office under my charge. I further certify that the foregoing page numbered one is a true and correct copy of the opinion rendered by the said board of commissioners on the claim of John Forbes and Co. for land on the west side of the river Apalachicola as the same appears of record in Book B of the original records of said board of commissioners, entitled "Second Volume, Record of Proceedings, Secretary's Book," upon pages 271 and 272 of said records.

I further certify that the foregoing pages, numbered from two to thirteen, inclusive, are a true and correct copy of the record of said board of commissioners in the claim of John Forbes and Co. as the same appears on pages 414 to 423, inclusive, of the record Book A of said original records of said board, entitled "First Volume, Record of Proceedings, Secretary's Book, containing a record of the proceedings of the commissioners for the settlement of claims to land in the Territory of Florida. July 15th, 1822."

Witness my hand and private seal, having no seal of office, this 23d day of November, A. D. 1903.

EDMUND C. WEEKS, [SEAL.]
U. S. Surveyor-General for the District of Florida.

(Endorsed:) # 210. P. 225. L. 1. U. S. District Court Southern District of Florida. Dalcour vs. U. S. B. Filed in evidence by complainants' solicitors and marked "Exhibit B," Dec. 28, 1903. R. B. Archibald, special master. Filed Mar. 17, 1904. E. O. Locke, clerk. Note. (State Papers to be marked "Exhibit C.")

339 (E)

No. 22680.

United States of America, Department of State. To all to whom these presents shall come, Greeting:

I certify that the documents hereto annexed are true copies from the files of this Department.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 31st day of October, A. D. 1903, and of the Independence of the United States of America the one hundred and twenty-eighth.

[SEAL.] JOHN HAY.

Translation of a note from the principal secretary of state of H. C. M. to the minister of the United States.

SIR: In consequence of the notes addressed by your exc. to this department on the 2d of Aug't, 1830 and 15th of last month, requesting that a careful inspection of the archives of the Govt. should be made for the purpose of procuring you certain documents which are wanted in the courts of justice of the United States in order to decide on the right of certain titles to land in Louisiana; his Majesty the King, desirous of obliging your exc's Govt., has been pleased to command that said archives be inspected and examined for the purpose expressed by your exc. I accordingly transmit under this date the necessary orders to the department of finance for the Indians, and to those, of grace and justice, and of war, as also to the keeper of the archives of this office. But I must observe to your exc. that it is not customary to allow the intervention of private agents in affairs of this nature, and that the business
340 must be performed exclusively by his Majesty's officers, on whom rests all the responsibility.

I at the same time transmit to your exc. a duplicate of the order communicated to the captain-general of Cuba for the delivery of the documents belonging to the archives of the Floridas, which your exc. believes are to be found in some of the dependencies of that island.

I embrace this opportunity of renewing to your exc. the assurance of my consideration & esteem, and have the honor to be

Your most obed. servt.,

(Signed) F. T. CALOMARDE.

At the Palace, Feb. 15, 1832.

Translation of an order communicated by the Department of State of H. C. M. to the captain-general of the island of Cuba.

SIR: The minister of the United States having represented to his Majesty's Govt. that there still exist in the dependencies of the island of Cuba certain documents belonging to the archives of the Floridas, which, agreeably to the 2d article of the last treaty, ought to be delivered to the United States; his Majesty has been pleased to order that your exc. shall direct said documents to be searched for and delivered to the person authorized by the American Govt. to receive them; which person will, perhaps, be able to explain to your exc. the nature of those documents and the office where they may be found.

I communicate to your exc. the foregoing under his Majesty's authority, and, expecting your immediate execution of the order it con-
341 tains, I pray God to preserve your exc. many years.

Madrid, 15th Feb., 1832.

(Signed) CALOMARDE.

(Endorsed:) 210–225–L. 1. U. S. District Court, Southern District of Florida. Dalcour vs. U. S. E. Filed in evidence by complainants' solicitor as Exhibit E., Dec. 28, 1903. R. B. Archibald, special master. Filed Mar. 17, 1904. E. O. Locke, clerk.

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357 EXHIBIT F².

P. 306.

An extract from No. 11, The Index "containing the general circumstantiated statement of all the lands, lots, and waters which were sold, granted, given or distributed from the aforesaid year 1801 to 1818, inclusive, p. 306 of the "Expediente" in the State Department.

INDICE DEL NO. 9.

Tierras que se concedieran en indemnizacion de daños y perjuicios:

Nombres de los indemnizados.	Coorden numero en relacion.	Situaciones.	Arpanes planos mas o' menos.
F. Forbes, Dn Juan y compañia.	Unico	Chata Hatcha y Apalachicola.	1,500,000

INDEX OF NO. 9.

Lands granted in indemnity of damages and injuries:

Names of the parties indemnified.	Coorder number in relation.	Situation of the lands.	Plat arpents more or less.
F.			
Forbes, Don Juan & Co....	Only one ..	Chata Hatcha & Apalachicola.	1,500,000

(312 in Spanish, following above in the exhibit is omitted by agreement of counsel, the translation attached thereto being as follows):

[Translation.]

Third. Among the aforesaid in the archives of the secretary of this superintendency general subdelegate of the royal finances of the island of Cuba, records and titles, there is an exact copy of the official documents (testimonio), which I have had furnished me of the grant made by the judicial decree of the captaincy-general of this island and both Floridas to the aforesaid firm of Forbes and Company, of lands situated in west Florida, in compensation of losses and injuries (see No. 9 of the
358 general account of the grants made in that province), but although the said copy is on paper with the proper stamp, and although it seems it ought to be attested by the deputy of the escribano of the Government and the corporation of the city, Don Miguel Mendez, now dead, this formality was omitted, either by being overlooked or because it was considered sufficient to have a plain copy for minute account or for the purpose of notice in the office of the secretary of this intendency and superintendency general; and I had omitted to note when I wrote the said No. 9 that I did it in conformity to what I myself had made a copy of when the authenticated official record (testimonio), which is there mentioned was furnished me; nevertheless for greater security I requested that the primitive and original expediente be exhibited to me, and it was placed in my hands and I demanded an authenticated official copy (testimonio autentico), which was given by the escribano of the Government Don Manuel de Ayala, on the 10th of February of the present year, 1824, by authority of a previous decree of his excellency the president governor and captain-general of the 28th of January of the same year, registered at the instance of Don Colin Mitchell, representative of said firm, and who left it in my possession.

* * * * * * *

359 [Translation.]

Page 336.

The number 9 is the detailed account of the grant of a large tract of land made by the captain-general of this island and both Floridas on the 10th of January, 1818, to the firm of John Forbes and Company by way of indemnity for the damages and injury they suffered.

360 Copy of a portion of the Expediente in the State Department paga 368, Arpanes con-cedidos por ~~indemni acion~~ indemnizacion y pago de perdidas, daños y perjuricios Por la concesion 1,500000 arpanes de tierra que se hizo en 10 Enero de 1818, por el Exmo Sr Capitan Gl. de esta isla que lo fué tambien de ~~amblas~~ ambas Floridas por indemnizac^{n}, y pago daños y perjuicios que se grand uaron en 100') o mas P^{s} segun la razon n'g del proprio agri ~~neusem~~ mensor Genl. 1,500,000 arpanes.

Demonstracion.

	Arpanes	Pote
~~Yo concidides por indemnerac y pago de danos y perjuicos 1,500,000 arpanes~~ Arpanes vendidos	772. 482	$\frac{1}{1}\frac{3}{0}\frac{1}{0}$
Yd donado graciosonente n	531. 665	$73\frac{1}{8}\frac{2}{8}\frac{1}{3}\frac{1}{3}\frac{1}{6}$
Yd concedidos por indemnizaco y pago de daños y prejuicios	1500. 000	
Total gral	2804. 147	$73\frac{1}{1}\frac{3}{0}\frac{1}{0}\frac{1}{3}\frac{1}{3}\frac{1}{6}$

~~Translation of the above~~

page 368 Appents granted as indemnity and pay for losses and damages and injuries.—

By the grant of 1,500,000 arpents of land which was made on the 10th of January 1818 by the ~~written decree of the~~ Exm Captain General of this Island ~~and~~, who was & also of the ~~two~~ both Floridas as indemnity and pay for the damages and injuries valued at 100,000 dollars which according to ~~the~~ N^{o} 9 of said surveyor Genl. note ~~decree there was granted 1,500,000 arpents~~ 1.500.000 arpents ~~Inventory~~ Summary of what precedes:

~~I have granted as indemnity and in pay for damages and injurious 1,500.000 arpents~~

	Arpents	Part
Arpents sold	772. 482	$\frac{1}{1}\frac{3}{0}\frac{1}{0}$
Ido donated gratuitously	531. 665	$73\frac{1}{8}\frac{2}{8}\frac{1}{3}\frac{1}{3}\frac{1}{6}$
do given as indemnity and payment for damages and injuries	1500. 000	
	2. 804. 147	$73\frac{1}{1}\frac{3}{0}\frac{1}{0}\frac{1}{3}\frac{1}{3}\frac{1}{6}$

(Endorsed:) "210–225–L. I. U. S. District Court, Southern District of Florida. Dalcour vs. U. S. F. No. 2. Filed in evidence by complainants and marked Exhibit F. No 2, Dec 30, 1903. R. B. Archibald, special master. Filed Mar 17 1904. E. O. Locke, clerk."

(NOTE BY CLERK.—This page 360 is a facsimile of the paper copied. The erasures (lines run through words) and insertions in ink and lead pencil are just as they appear on document copied—E. O. LOCKE, *Clerk.*)

361 (G.)

Translation of extracts from a document in the States Department entitled "Copy."

Year 1822.

No. 226. 1st memorandum royal orders.

Complete copy of the expediente, made by royal order, April 29th, 1822, which commands that a minute account of the donations of land made in the Floridas and recorded in this administration be forwarded to His Majesty, reading as follows:

Royal crier, department of the colonies: The King wishes your excellency to make and remit with the greatest speed, to this administration of which I have charge, a minute account of the donations or grants of land recorded in that office to have been made in the Floridas, procuring to enumerate with perfect clearness the concessions made to Spaniards, as upon this detail and speed depends their acknowledgement by the United States, which by royal order I communicate to your excellency for its speedy accomplishment.

God preserve you many years.

Madrid, April 22nd, 1822.

GAMBLEY,
Intendant General of the Army of Havanna.

Decree.

Havana, July 27th, 1822. Let it be done. For which draw up an expediente, heading it with a certified copy of this royal order, and immediately inform the ministers of all the national departments.

Pinillos.

It is a copy.

JUAN NEPUMOCENO DE AROCHA.

Another.

Havana, August 3rd, 1822. Let the ministers of the departments report as I have commanded in my decree of the past proximate. Pinillos.

Report:

362 General Intendant of the Army: There is no evidence whatever in this department under our charge from which can be filled the above royal order, but it might perhaps be found in the archives of the secretary of subdelegation of both Floridas, although in regard to West Florida we are informed that the surveyor-general, Capt. Don Vicente Sebastian Pintado, carried a register of the grants made from the year 1806. He may be able to furnish the information desired.

Your excellency will proceed to take such steps as he may deem proper.

Havana, August 8th, 1822. Only on account of business engagements of the treasurer it is signed by Ayala.

Decree:

Havana, August 26, 1822. Let Captain Don Vincente Sebastian Pintado inform with the proper minute enumeration all he knows of the matter contained in the decree, that we may fulfill with the greatest speed the enclosed royal order provided by His Majesty. Pinillos.

Report:

Your Lordship, Commander and Superintendent: Gen. subdelegate. Regarding the matter disposed of by your excellency in the above decree in reference to that provided in the royal order of April 29th of the current year of which a certified copy preceded, and as to the knowledge in my possession, if I am to furnish your excellency, as commanded with a detailed accurate account, I shall require the assistance of some one, that is a clerk, and if possible I should like it to be Don Matias Bauve, a public officer of Pensacola, formerly attached to the treasury of the army and national finances. Havana, September 9th, 1822.

VINCENTE SEBASTIAN PINTADO.

Decree:

Havana, Sept. 21st, 1822. Let the secretary of this superintendency after having examined paragraphs 3, 4, and 5, proceed to investigate if in the office under his charge are extant the above indicated information, and the best manner of sending them clear of obstacles to Capt. Vincente Pintado, that he may discharge his duty with better knowledge and extension. Pinillos.

Report:

The Intendant General of the Army: To better accomplish the preceding decree of your excellency, it seemed to me more opportune that at the examination of the papers which the official archivist should make, that Capt. Pintado should join him, and having proposed it to him,
363 he most willingly consented to its performance, which was accomplished with the utmost diligence, selecting from those received from Pensacola and deposited in his office those specified in the enclosed inventory conductive to the object of this expediente. The only legal proceedings required in their delivery should be the signature of Capt. Vincente Pintado, as out of respect for the character and position of the above-mentioned captain, no other formality is required than to sign the inventory referred to as security to this secretary, under condition that they be returned on completion of the work which they have served to facilitate. Nevertheless, your lordship will decide as seems most convenient. Havana, October 10th, 1822. AROCHA.

Decree:

Havana, October 21st, 1822. Allow the said Captain Vincente Sebastian Pintado, with all due respect and regard asked for him, to find the concessions or grants of land made by the Seminole or Lower Creek Indians, and confirmed by the commandancy and government of West Florida, and also those made by the captain-general as expressed in his fifth remark and which may be deduced from existing documents and other information in his possession. Let the said Pintado regulate the dates and boundaries with the clear-sighted fitness of time in the delineations No. 6 and 7, and explain especially all that he judges convenient for the object of our high Government, which, no doubt, should be to protect in its dominions the owners of the property acquired legitimately under the Spanish authorities, thus releasing the nation of the responsibility of reimbursing the owners of these grants, a situation to which they might otherwise be exposed. Engage Don Mathias Bauvé or any other competent clerk for the purpose requested, to which effect communicate the official report to the other ministers. Make a memorandum of this.

In order that Captain Pintado begin his work without delay and send the report to the tribunal of accounts, so that they may supply the data extant in their treasury, and inform with all possible speed whatever presents itself and seems to him of importance in the business set forth in this decree by official letter.

PINILLOS.

Note:

The same day the order regarding the clerk was made known
364 to the administrations.

AROCHA.

Entry of decree:

On Oct. 23rd, 1822, I entered the decree in the proceedings for the purpose therein expressed.

VINCENTE SEBASTIAN PINTADO.

No. one:

Detailed account of the lands, water, and lots which were sold, conceded, and distributed by the Spanish authorities in West Florida from the year 1801 to 1818, inclusive, specifying the name, nativity, and residence of the purchaser, concessionaries, and grantees, the surface of the lands and waters, number of lots received, either by purchase, donation, or distribution, their repective situation, the record begun, and other particulars conducive to fulfill the object of the royal order of April 29th, 1822, and decrees of this administration and superintendent general subdelegate of national finances set forth on Oct. 21st of the same year in the expediente, which matter has been officially followed by the same superintendent.

* * * * * * *

No. nine:

Detailed account of the concession of a large grant of land in West Florida by the captain-general of this island and both Floridas in decree registered January the 10th, 1818, to the house of Don Juan Forbes and Co. established in said provinces by royal permission as indemnity and pay of losses, thefts, damages, and injury which it suffered, for reasons which will be related, and estimated to be worth the sum of one hundred thousand dollars or more, with the express condition that said house or firm would consider themselves satisfied without being able to claim any other compensation whatever from the public treasury.

This report is part of the general report of all the lands, lots, and water sold in the above-mentioned province from 1801 to 1818. Description of tract conceeded.

The natural and artificial limits and boundaries are clearly as follows:

Beginning on the western banks of the Apalachicola River, at a point opposite the mouth of the creek known as Sweet Water, which flows
365 into said river, and on its eastern shore, some twenty or twenty-two legal English miles towards the south ¼ southwest by compass touching the mouth of the River Flint, in the direct distance from which point runs or ought to run a straight line to the west of the compass until it reaches the eastern banks of the river Chata Hatcha following this same bank, excluding the islands, as far as the mouth of the Ste. Rosa Bay. Coasting this to the east and meridian until it comes out at the Pass of the Eastern or Eastern Pass, from thence following the shores

of the sea or Gulf of Mexico towards the southeast, including the island of St. Andres as far as the bend of the coast at Cape St. Blas, and falling on the most western point of the island of St. Vincent, south 14 degrees west of the magnetic needle, where another tract begins claimed by the same firm, and which runs to the western banks of the above-mentioned Apalachicola, from its mouth to the arm which goes to Lake Winico; after following the land granted, going up the most western banks of said river Apalachicola until reaching the same point on the opposite side of the Sweet Water Creek, where it terminates.

The surface or area of this tract of land and water is estimated to be, more or less, one million and a half arpents, Paris measure, 1,500,000.

Steps which preceded and followed the concession and decree registered was granted according to the testimony of the expediente circumstances connected with the business arranged and directed and disposed of in this administration and superintendency general, in decree of Oct. 21st, 1822, according to royal order of April 29th of same year.

At the beginning of January, 1818, the petition of which this is a copy was presented.

Your excellency, Don Juan Forbes, director and partner of the firm of Forbes & Co., established under royal permission, in the town of Pensacola, to do a mercantile business, particularly with the Indians of that province, appears before your excellency in the manner authorized by law, and states that, during the movements and action of the last war sustained between the American Indians and the subjects of Great Britain, our interests have suffered as well on our plantations as in our warehouses, more than can be expressed with all exaggeration.

Many of the slaves belonging to the firm were kidnapped and
366 hidden by the Indians during the stay of Col. Nicholas in this post, although the government of Pensacola, being cognisant of the fact, requested vigorously the return of the slaves. It was all in vain; none of them were returned. To facilitate their restitution, without further loss to the royal exchequer, whose expenses were great and who is responsible, the firm fitted up vessels on various occasions at their own expense to coast the waters and try to reclaim them. In the first vessel that went out for this purpose, the governor commissioned the captain of the regiment of Louisiana, Don Benigno Calderon, with other officers. After this on two occasions we sent special agents so that the public employees should not be forced to absent themselves from their duties. The result, however, of these undertakings were always the same—that of not obtaining the stolen property. The same firm commissioned Edmond Doyle and Guilliano Hambly for the same purpose, paying them large sums for their work and giving an indemnity to the last named for all the losses he sustained. More than this, Woodbine instigated the Indians, of whom *of whom* he also made himself chief, to steal negro's, and we were obliged to pursue them and institute criminal proceedings in the province, which cost enormous sums of money, with no good results, because they had the art of escaping the clutches of the law; therefore all efforts and sacrifices made by this firm to save the Government from losses have only been to increase them.

During the same time of turbulence and disorder, the Indians carried off a thousand beasts belonging to the company, losing at another place

thirty-eight horses and two mules. And at last a party of the same Indians set fire to the warehouse of the firm in Appalachicola, carrying away eleven of our slaves with the whole drove of horses and other implements and chattels without leaving a single thing, and taking also as prisoners Doyle and Hambley, who with reason and justice claim of the firm damage and injury, personal and otherwise, which they sustained, through such strange and unheard-of proceedings. Such large losses, including the labor of the negro's, capital, and interest of money, does not come to less than one hundred thousand dollars. We should receive this indemnity from this superior government to which Pensacola is subject, compensating my firm with money or its equivalent.

367 The losses are positive, and it suffices to cast a glance at the correspondence in this matter carried on between the commandant of the province with this captain-generalcy to leave no doubt in the mind of the veracity of my statement, for which I can also give full proof by the surveyor-general, Capt. Don Vicente Sebastian Pintado, Don Francisco Arroyo, in addition to that of the secretary of this administration and other equally respec'able individuals who have been in Pensacola under Your Majesty's service.

So then, considering on one side how difficult it will be to pay me in sound money, as should be done, the hundred thousand dollars which is undoubtedly due my house, on account of the scarcity of money in the public treasury, and again for the many services rendered at all times for Your Majesty, with which resources it can be said the army stationed at that post has been maintained, having still a debt against you of over eight thousand dollars, it would increase considerably the population of the province if, in compensation of the above-mentioned sum, you would appropriate in absolute title and right of possession to the above-cited company of Forbes, whom I represent, a tract of land which is unclaimed, and begins at the creek known as Sweet Water in the river Appalachicola, following westward in a straight line until it strikes the river Chata-Hatcha, following the course of said river to where it empties in the bay of the island of Ste. Rosa, going towards the east on the shores of the same bay and the sea until it strikes the boundaries of the land to the west of the river Appalachicola already ceded to our firm by the Indians, following the course of the same river to its mouth.

I know very well that the above-mentioned land, much of which cannot be cultivated, does not compensate even the fourth part of the sum I claim on account the amount of losses and damage experienced, as I have said, amounting to more than one hundred thousand dollars, but what can be done? This will be a new motive for increasing the love and constant loyalty that my partners and myself profess for our sovereign. Not wishing that Your Majesty should feel the loss of so large a sum of money disbursed, we content ourselves with the knowledge that our industry and time alone will make this of some benefit to the province, thus increasing your royal patrimony.

368 Therefore we request your excellency, on account of the merit of the above statement, which can be verified in the correspondence between the commandant of Pensacola and the Government regarding the damages narrated and the information which can be well testi-

fied to prove them, you will decree in full dominion this tract of land designated under the boundaries as set out to the firm of Forbes and Co., of which I am manager and which I represent, dispensing with the necessary interlocutory decree which confirms the possession, with which we guarantee ourselves satisfied and compensated for the claims of indemnity and damage asked.

It is in justice that I ask it, swearing that it is not in malice, and what is needful, etc.

JUAN FORBES.

PEDRO ANTONIO DE AYALA.

By decree of Jan. 5th, his excellency sent the preceeding petition to the assessor-general to provide suitable returns, and authorized decree of the same day; they sent to receive the information advanced, intrusting it to deputy notary for the governor and directing them to grant the required assistance. By decree of the 7th of the same month, the commander of the army, the superintendent-general, lent his aid and ordered its accomplishment without injury to his jurisdiction.

Having received the information, it proving to be true and in accord with that presented by the firm referred to, there was issued on the 10th of the referred to January, 1818, the recorded deed or decree of concession of the following tenor:

Examined and found correct with the preliminaries, which were ordered to pass the proposal made in writing by the interlocutory decree of the 6th of the present month, considering its merits as produced in this expediente. In as much as the firm of Forbes and Co., established under royal permission to carry on commerce with the Indian tribes, claim indemnity of one hundred thousand dollars losses it has sustained by damage during the movements and actions between these same American Indians and the English subjects of Great Britain during the stay there of Capt. Nichols, and when Woodbine made himself chief
369 of the Indians instigating them to commit all manner of robberies for which at the time claims were made without success to return to the said firm of Forbes & Co., the negro's and other animals and goods, of which they were unjustly despoiled, and on the other hand that the tract of land which they ask to appropriate in payment and compensation of the sum expressed, can never bring such a price in a province so sparcely settled, there being no one to devote themselves to their cultivation, according to information obtained including that of the surveyor-general of Your Majesty, Don Vincente Sebastian Pintado, and that by coming into the possession of Don Juan Forbes, principal of the said firm, it may benefit it and attract colonies to establish themselves on it, accruing to the benefit of the state, which at present is uncultivated and abandoned; considerations which moved the worthy spirit of His Majesty, so that by royal letters patent of August 10th, 1815, they offered lands to those who wished to locate on the islands of Puerto Rico, as the most suitable means which can be employed to increase a population; Therefore, in conclusion, your excellency said that exercising the authority vested in him, it has been adjudged, and I do adjudge and grant the above-mentioned land to Don Juan Forbes and Co., under the consideration and boundaries set forth in the first leaf of this document, prohibiting

him from claiming any dues from the royal treasury for losses or damages which he may have sustained, since with its value, be that what it may, he remains compensated in toto, and cancelled his established demands for indemnity. The commandant of said town of Pensacola, in virtue of this decision will place him in quiet and peaceful possession of the above-mentioned land, to which attainment his excellency ordained that the same firm of Forbes be given the necessary official titles, recording the originals.

Office of the assessor. Thirty-two dollars paid.

CIENFUEGOS. DEL MONTE. MIGUEL MENDEZ.

In December of the aforesaid year, 1818, the aforesaid house presented a memorial which is literally inserted with the decree made.

Your Excellency: The firm of Forbes & Co., merchants of
370 Pensacola, through their agency in this city, say to your excellency that in the midst of the perplexity and confusion occasioned in the public archives of that city by the entrance and taking possession by the American army, he preserved the original decree which was executed by Col. Don Jose Masot, political and military commander of the province of Florida, in consequence of the one decree of this Superior Government, for the indemnity and damages obtained by the petitioners.

It being convenient and proper that he should have two official copies, one of which he may attach to the record preserved in Pensacola and one to retain for himself. He therefore begs your excellency to order the Government notary public to supply him the two authentic copies asked for, a favor implored. Havana, Dec. 17th, 1818.

COLIN MITCHELL.

Havana, December 18th, 1818. Transmitted to the assessor-general.

CIENFUEGOS.

Havana, Dec. 18, 1818. Examined and found correct.

See that the document is furnished the firm of Forces and Co., as the evidence they have solicited.

CIENFUEGOS. DELMONTE. MIGUEL MENDEZ.

The document referred to in the preceding business is of the following tenor:

Don Jose Masot, col. of royal corps of artillary, political and military commander of the province of West Florida, subdelegate of royal exchequer, etc.

In compliance with the superior decree which precedes from his excellency the Capt. Gen. of this province of the 10th of the current month and year, by which as an indemnity he concedes to the firm of Forbes and Co. a tract of land situated between the river Appalachicola on the east and Chata-Hatcha on the west, the sea on the south, on the north by a line which should begin opposite the point of the creek known as Sweet Water Creek, on the east side of the Appalachicola, three *three* miles and a half north of a place known as Alum Bluff, running west to meet the Chata-Hatcha, there following the sinuo*u*sities of this river it empties into the Bay of Sta. Rosa, there following the eastern shore to

the sea, until striking the boundaries of the land already
371 conceded to this firm by the Indians, and follows these boundaries on the west, ascending with the river to where it empties on the west of Appalachicola, and begins at the ext'eme western point of the island of St. Vincent, from there following the boundaries of said land until the Appalachicola, then the tortuous course of said river as far as the *the* division line which serves as boundary on the north front of the above-mentioned creek of Sweet Water. Therefore, in compliance with the already mentioned decree of this excellency of the 10th of the current year, I place in possession of the said firm of Forbes and Co. the above-described tract of land, and I declare and give to them full and complete possession of the aforementioned land, that as their own property they may enjoy it, sell, alien or mortgage it, on any terms they may deem proper.

In testimony of which I ordered to be issued this paper, signed by my hand and sealed with my coat of arms and countersigned by the undersigned secretary of this gov., and subdelegation, the 23rd day of January, 1818.

JOSE MASOT.

CARLOS REGGIO. [SEAL.]

In July, 1819, the same Forbes presented a document with the tenor of which with the interlocutary decrees are as follows:

Your Excellency, Don Juan Forbes, head and manager of the firm of Forbes and Co., merchants of Pensacola, before your excellency, in compliance with the law, appears and states, it is deemed necessary, according to the right the law gives me, that Your Majesty's public surveyor, Don Sebastian Pintado, of that province, who has been sent to the place, make a clear survey of the lands which I own in that territory and which have been granted me as indemnity and damage, recording this in the office of the auditor of the surveys (measures) and which is in the charge of the same Pintado. Therefore I beg your excellency to dispose of the matter in the proper form, first swearing the officer who is to discharge this trust to give oath to its faithful performance, that he date it, and return it to me for my use. This I ask in justice, not in malice or want.

JUAN FORBES. PEDRO RODRIGUEZ SLD.

372 Havana, July 26th, 1819. Ordered to be carried into effect by Dr. Don Francisco Guitart on account of illness of assessor-general.

CIENFUEGOS.

Havana, July 29, 1819. Examined and found correct. Proceed immediately and do as requested in the preceding writing.

CIENFUEGOS. DR. GUITART.

On said 30th day of July was made known to me the last decree for my acceptance and certificate. I accepted the making of the topographical plan of the land, arranging all data of the measurement not by actual measurements, as it was impossible to transport myself to the grounds, fixing it as well as could be with the data I had; also to explain clearly and record the same so that at all times it may be evidence, for

which purpose I ask the documents preceding, which were furnished me from the authenticated document aforementioned as having been examined. I executed it on the 15th day of September of the same year, attaching a graphic description or plan to the said documents. The original I returned as requested and ordered, after having taken the corresponding record. I made the plan or chart under the number 1869 and registered the said number which in regular order belonged to it on the 17th day of the same Sept., specifying the boundaries according to the description at the beginning, estimating the area at the surface at one million and a half arpents, more or less, of land and water.

Havana, 31st October, 1828. VINCENTE SEBASTIAN PINTADO.

This is a copy of the original, which I certify to in compliance with a decree of his excellency, the superintendant gen. delegate of the royal exchequer, its date the 25th of last month, to deliver to the consul of the United States of America, leaving to him to pay the cost of the clerk of his choice, and he is notified to whom it may concern, that in said copy there are written in Arabic numbers the sums and dates, contrary to the uses customary in such documents. And I sign the present in the ever faithful city of Havana on the 15th day of July, 1835.

(Interlineation noted.) Folio 15, who was ignored as not able to
373 appear. Folio 34, for the 40 arpents aforesaid. Folio 69, for the one ordered to send the deed. Folio 71 (X), Spanish. Folio 83 (X), being a native of Louisiana, married and located in Pensacola. Folio 138 (X), for making the survey for said gentleman on the 19th of the same March. Folio 142 (X), this one being dead, they sold his testamentary to Jacob Nash. Folio 143, verbally. Folio 149, on the 26th day of April, 1809. Folio 194, who gave his receipt equally and on the same date. All valid or properly made.

JUAN NEPUOCENO AROCHA.

Well examined and correct.

VILLANUEVA,
Consulate of the United States, Havana.

Received from His Excellency the Count of Villianueva, administrator of the island of Cuba, etc., July 18, 1835. N. P. Trist, consul of the United States and commissioner to demand and receive the Florida archives.

[Seal of the U. S. consulate at Havana.]

(NOTE.—(X) means on the other side of the leaf or folio.)

(The foregoing is indorsed as follows:) "210. 225. L. 1. U. S. District Court, Southern District of Florida. Dalcour vs. U. S. G. Filed in evidence by complainant as Exhibit G, Dec. 28, 1903. R. B. Archibald, special master. Filed Mar. 17, 1904. E. O. Locke, clerk."

374 (I.)

No. 21118.

United States of America, Department of State, to all to whom these presents shall come, greeting:

I certify that the document hereto annexed is a true copy from the records of this Department.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 1st day of August, A. D. 1903, and of the Independence of the United States of America the one hundred and twenty-eighth.

JOHN HAY. [SEAL.]

(Copy.)

DEPARTMENT OF STATE, *W., 28 April, 1829.*

JAMES G. RINGGOLD, Esq.,
Attorney U. S. for Middle D. of Fla., Tallahassee.

SIR: I have the honor, by direction of the secretary, to transmit to you by Judge Randal, a manuscript book, lately received here from Mr. Tacon, minister resident from Spain, entitled "Concessiones Terras en Las Floridas," which has been procured from Havana, for the sake of the information which it contains, in reference to some important suits pending in the court of the United States for that district, wherein the United States are parties, and to ask you to let the gentlemen who may be associated with you, in behalf of the United States in these suits, have all the benefit which they can derive from the use and inspection of it.

I am with great respect, sir, your obedient servant,

(Signed) D. BRENT.

(Endorsed:) "210. 225. L. 1. U. S. District Court, Southern District of Florida. Dalcour vs. U. S. I. Filed in evidence by complainant as Exhibit I, Dec. 28, 1903. R. B. Archibald, special master. Filed Mar. 17, 1904. E. O. Locke, clerk."

* * * * * * *

410 EXHIBIT Q.

To the honorable H. M. Brackenridge, one of the United States judges for the Territory of Florida and presiding judge of the Western district of said Territory:

The petition of James Innerarity and of John Innerarity, of the city of Pensacola in said Territory, respectfully represents that they are the sole surviving partners of the late mercantile house of "John Forbes & Co." and are interested as tenants, in common with the heirs of the said John Forbes, in a tract of land lying between the Apalachicola and Choctawhatchie rivers granted by the Spanish Government, while the said Territory of Florida was one of the provinces of Spain, to the said John Forbes and your petitioners under the name and style of "John Forbes & Co.," as will more fully and at large appear by the grant therefor, reference thereunto being had, bearing date the 10th of January, in the year of our Lord 1818, and executed by the then captain-general of the island of Cuba and the two Floridas.

That since the cession of the said Territory of Florida to the United States, the Government of the United States, notwithstanding the stipulations of the treaty of cession in this regard, has refused to recognize the said grant by legislative enactment, but has authorized, by act of

Congress, suit to be brought against the United States to try the validity of the said grant & others similarly situated.

That your petitioners have instituted suit against the United States, in the court of the said United States holden in the county of Escambia, for the purpose of trying the validity of the said grant in pursuance of the said act, and the second day of September next is set for the trial thereof.

411 That your petitioners are advised by counsel that it will be necessary for them to produce at the trial the original grant for the land aforesaid, and that according to the course of that court and the rules of the common law that now govern that Territory a copy thereof can not be read in evidence for them unless they can account satisfactorily for the absence of the original, & then that it is without their fault and beyond their control.

That in consequence of a custom and the uniform practice of the Spanish Government in retaining in the offices appropriated for that purpose the original of all grants, and to allow the grantees to receive copies only of such originals, the original of said grant is not in the possession of your petitioners nor in any manner under their control, but they have been informed and verily believe that Richard K. Call, esq., of the town of Tallahassee, in the county of Leon, has obtained possession of the original of said grant from the Spanish authorities of the island of Cuba, where the same was on record. Wherefore your petitioners pray your honor to be pleased to order the clerk of the U. S. court of Escambia County, wherein the said suit is depending, to issue a writ of subpœna duces tecum directed to the said Richard K. Call, esq., commanding him to be and appear before the said court on the second Monday of September next, and to bring with him the original of said grant in order that the same may be read in evidence on the trial aforesaid & that such proceedings may be had thereupon as pertain to right and justice, & your petitioners will ever pray, &c.

(Sgd.) JAS. INNERARITY.
JOHN INNERARITY.

We do swear that the facts stated in the above petition are true
412 to *to* the best of our knowledge and belief.

(Signed) JAS. INNERARITY.
JOHN INNERARITY.

Sworn to in open court.

(Sgd.) GEO. F. BALTZELL, *Clk.*

Let a subpœna duces tecum issue 2nd August, 1830, according to the prayer of the above petition.

(Signed) H. M. BRACKENRIDGE.

To the CLERK OF THE COUNTY OF ESCAMBIA.

(Marginal:) Filed 3rd August, 1830.

I, A. M. McMillan, clerk of the Circuit Court of Escambia County, Florida, and as such having in my custody the files and records of the United States Superior Court of the Western District of the Territory of Florida, do hereby certify that the foregoing 3 pages constitute a true and correct copy of a paper and its endorsements in the cause of John

Innerarity and James Innerarity and the heirs of John Forbes against the United States, as the same remains of file and of record in said cause in said court.

In witness whereof I have hereunto set my hand and affixed my official seal this 2nd day of March, A. D. 1904.

A. M. McMillan, *Clerk.*

(The foregoing has the following endorsement:) "210. 225. L. 1. U. S. District Court. Southern District of Florida. 'Q' Dalcour vs. U. S. Filed in evidence by complainants and marked 'Exhibit Q.' R. B. Archibald, master. Filed Mar. 17, 1904. E. O. Locke, clerk."

* * * * * * *

420 U.

Territory of Florida,
Escambia County, ss:

I, John Innerarity, one of the petitioners in the case of James Innerarity and John Innerarity and the heirs of John Forbes vs. the United States, do solemnly swear that a chest containing the original exemplifications of the grant to "John Forbes & Co." for a tract of land lying between the Apalachocola & Chactawhatchie rivers, and which had been filed and recorded in the land office established by the United States at Pensacola, has been stolen from the possession of this affiant, and that the said document has never since been recovered, and that I have no knowledge whether the same is now in existence or not, but believe it to have been destroyed, inasmuch as nothing of the contents of said chest have ever been recovered, though several years have elapsed since the loss.

(Signed) John Innerarity.
Before.

Sworn to before me in Pensacola this 29th September, 1830.

M. I. Carnidytier, *T. of W.*

(Endorsement:) Forbes & Co. vs. The U. S. Affidavit.

421 I, A. M. McMillan, clerk of the Circuit Court of Escambia County, Florida, and as such having in my custody the files and *and* records of the United States Superior Court of the Western District of the Territory of Florida, do hereby certify that the foregoing 1 pages constitute a true and correct copy of a paper and its endorsements in the cause of John Innerarity and James Innerarity and the heirs of John Forbes against the United States, as the same remains of file and of record in said cause in said court.

In witness whereof I have hereunto set my hand and affixed my official seal this 2nd day of March, A. D. 1904.

[court seal.] A. M. McMillan, *Clerk.*

(The foregoing has the following endorsement:) "210. 225. L. 1. U. S. District Court, Southern District of Florida. U. Dalcour ve. U. S. Filed in evidence and marked 'Exhibit U.' R. B. Archibald, master. Filed Mar. 17, 1904. E. O. Locke, clerk."

V.

422 Preceding this certificate is a Spanish document the translation of which follows this certificate. Then this certificate as follows:

I, A. M. McMillan, clerk of the Circuit Court of Escambia County, Florida, and as such having in my custody the files and records of the United States Superior Court of the Western District of the Territory of Florida, do hereby certify that the foregoing 14 pages constitute a true and correct copy of a paper and its endorsements in the cause of John Innerarity and James Innerarity and the heirs of John Forbes against the United States, as the same remains of file and of record in said cause in said court.

In witness whereof I have hereunto set my hand and affixed my official seal this 2nd day of March, A. D. 1904.

[SEAL OF COURT.] A. M. McMILLAN, *Clerk.*

Then follows the translation above spoken of as follows:

423 The House of John Forbes & Company.

YOUR EXCELLENCY: Don John Forbes, partner and director of the house of Forbes and Company, established in the place of Panzacola [sic], in virtue of a royal privilege of conducting their trade, and particularly with the Indians of the province, comes before your excellency in the most proper manner and says that during the movements and actions of the last war held between the American Indians and the English subjects of Great Britain, their interests have suffered as well in planting establishments as in their stores, effects, etc., more than any exaggeration could afford an idea of. Many of the slaves belonging to the company were carried away and harboured by the Indians while the Col. Nicholes remained there and although the government of Panzacola, having ascertained the fact complained of the virtual spoliation of the slaves, it was all in vain, for they were not returned.

In order to facilitate their restitution without causing the royal treasury a loss, for which it was and is responsible, my company armed barques on several occasions at their own expense with no other object than to recover them; in the first vessel that went out for that object Government sent with a commission Capt. Don Benigns Calderon, of the regiment of Louisiana, together with other officers; after that on two other occasions private persons in order not to take the public officers from their posts. However, the result of these missions was always not to obtain the restitution of the property carried away. The aforesaid house deputed Edmond Doyle and William Hambly for the aforesaid object, giving them large gratuities for their trouble and compensating the latter for the loss which he suffered of all he possessed. Besides all this, Woodbine instigated the Indians, of whom he had constituted
424 himself chief to steal the negroes and we were compelled to prosecute him, instituting for that purpose a criminal suit which occasioned immense expense without any good result, for he had the art to take occasion to make his escape from the hands of justice in such way that all the efforts and sacrifices made by the house to save the Government

those losses have served only to increase them. In the same time of disorder and confusion the said Indians carried away about 1,000 head of cattle, the property of the company, losing at another place 38 head horses and 2 mules, and at last a troop of the same set fire to the stores of the house at Apalachicola, carrying away with them all of our slaves with all our horses, oxen, and other utensils and goods which they found there, without leaving anything, and carrying as prisoners Doyle and Hambly, who with reason and justice have demanded of the house indemnification for the damage as well as personal injuries which they have experienced in proceedings as strange as unheard of.

So many losses which, including the labor of the negroes, the capital and interest of the money, are not less by a moderate calculation than $100,000.00, are to be indemnified by this Superior Government, to which that of Pensacola is subordinate, either in money or by compensating the company with something else equivalent. The losses are positive, they are actually existing, and it is necessary only to look at the correspondence which took place upon that subject between the commandant of the province and this captaincy-general, to have no doubt of the truth of this my exposition, upon which likewise I can give satisfactory evidence from the surveyor-general, Don Vincente Sebastian Pintado Don Francisco de Arroyo, attached to the secretary of this intendency, and the other individuals of equal respectability who were in Panzacola in the service of his Majesty.

Considering then on the one side how difficult it will be to pay me in actual cash as is my due the $100,000.00 for which most incontestibly my house is creditor on account of the well-known scarcity
125 suffered by the public treasury, and on the other side considering the great services which at all times the house has rendered to the Sovereign, by whose means and help it may be said with truth that the troops of that garrison has been supported, having yet due and to receive more than $8,000, the population of the province would be considerably augmented without comparison of the said sum if full dominion were given to the said house of Forbes which I represent over a tract or parcel of land which is now vacant and begins at the creek known by the name of Sweet Water Creek, emptying into the Apalachicola River, and following a course due west to the Choctawhatchee, following the course of this river to its mouth in the Bay of Santa Rosa's Island, and following thence east on the shore of the said bay and of the sea to the line of the lands west of the Apalachicola, already ceded by the Indians to our house, following the western line of them and ascending the course of the said river to the point of its commencement.

I know very well that the aforesaid land in a great many parts is not susceptible of cultivation, will not compensate for even the one-fourth part of the sum I claim for the losses and damages sustained as I have already herein stated, amount to more than $100,000.00, but as it is to be done this will be to me an additional motive to increase the love and constant loyalty that I and my partners profess to our Sovereign not wishing his Majesty to support the loss of the damages of such a large disbursement and being content that with time and our industry alone it may be made productive of benefit to the said province and tend to the increase of his royal exchequer.

Therefore I supplicate your excellency that having in view what is here recommended what is shown by the correspondence between commandant of Panzacola and this government upon the losses above related and the information which I shall immediately furnish to prove them
426 to be pleased to adjudicate in fee simple (dominio plano) to the firm of Forbes and Company of which I am chief, and which I represent the land or tract of land designated by the boundaries and points already described, taking the provision necessary to giving possession with which we shall consider ourselves satisfied, contented, and compensated for the claims of damages and indemnification asked for. This is justice, and I offer to make oath that it is not through even design and to do anything else that may be necessary, etc. Don Pedro Antonio de Ayala. John Forbes. (Another signature which is illegible.)

Decreto (*Decree:*) Havana, 5th January, 1818. Let this be carried to the Attorney-General [here the title is illegible] to provide what may be necessary.

CIENFUEGOS.
MIGUEL MENDEZ.

Notification. I certify that in the Havana on the same day I communicated this to John Forbes.

MENDEZ.

HAVANA, *5th January, 1818.*

Seen: Let the information which the house of Forbes and Company ask for in the foregoing petition be received by the present escribano, to whom charge be given of it and let him have the necessary assistance to give him the usual political form, and, when completed, let it be brought with the cited papers, the tax of 24 rials paid.

(2)
DEL MONTE.

(1) (3)
CIENFUEGO—MIGUEL MEMDEZ—

I certify that on the same day of the same month and year that I communicated the same to Don John Forbes. Mendez.

HAVANA, *January 7th, 1818.*

Tax of 10 rials paid.

Let this be accomplished without injury to this jurisdiction. A flourish. Ramirez.

COMPUSANO. MIGUEL MENDEZ.

427 Deposition: In the city of Havana, on the 7th of January, 1818, in virtue of the orders received, I went to the house of Don Francisco Gutierres de Arroyo, formerly secretary of the intendency, which used to be in West Florida, and now annexed to the secretary of this superintendency general subdelegate, from whom I received the oath, which he took according to the usual form, to tell the truth, and examined him concerning the tenor of the first sheet of the paper produced by John Forbes. After having well ascertained its meaning, he said: That having resided in that place since February, 1806, discharging the duties of his office he can assure as an ocular witness that the facts on which rest those who ask for an indemnification of damages are so positive and certain that there is no disinterested person in that prov-

ince who would not admit them; that their losses were enormous, as well in the said place as in the factories which they that ask had established on the rivers of Apalachicola and Perdido; that the Indians carried away the slaves they had on their farms, hiding them while the Colonel Nicholes remained there, the demand of the Government not being sufficient to obtain their restitution, nor the commissions which were afterwards given for that object to Captain Benigno Calderon, of the regiment of Louisiana, and other officers, nor to other private individuals, so that in the belief of the deponent the sum of 100,000 dollars asked for the damages related is not exaggerated, comprehending more than a thousand head of cattle, oxen, and horses and other utensils and goods robbed from the house of Forbes by the aforesaid Indians, for which they have not received the smallest compensation from our Government, it being the only house in Panzacola which has rendered important services to our Sovereign; and he says further that what he stated is the truth, under oath, and that he is 55 years old, and that he is not comprised in the generalities of the law, of which he was apprized. This was read to him, and he agreed to its contents and signed it; all of which I certify.

FRANCO. GUTIERREZ DE ARROYO.

Before me,

MIGUEL MENDEZ.

428 In the city of Havana, on the same day, month, and year, I went to the house of Don Vincente Sebanstian Pintado, surveyor-general for his Majesty, from whom I received the oath which he took in the usual form to tell the truth, and having examined him as I did the preceeding witness, he said: That having remained in Panzacola he knows and is certain that during the movements and actions between the American Indians and the English subjects of Great Britain the house of Forbes and Company, established there by royal permission to treat with the Indians, suffered damages to the greatest amount as well in Panzacola as in Perdido and in Apalachicola by the events and causes which they had narrated, and that although the deponent can not estimate to how much their damage and injuries did amount, still he believes it to be a considerable sum, and likewise that they have at all times rendered important service to the troop of that garrison and to the King, our Lord, upon which subject there must exist evidence in the secretary of this Government. And he answers that all he has stated is the truth, under oath, his being of age, and not comprised in the general provisions of the law of which he was apprized.

It was read to him, and he assented to it and signed the same, which I certify.

VINCENTE SEBASTIAN PINTADO.

Before me,

MIGUEL MENDEZ.

429 In the City of Havana in the day, month, and year aforesaid, I went to the house of Don Francisco Guerrero, captain of the regiment of Louisiana, from whom I received the oath in the usual form, which he took, of telling the truth, and being examined as the

preceeding witnesses, he said: That having resided for a long time in Panzacola that he knows and is certain that during the movements and actions between the American Indians and the English subjects of Great Britain the house of Forbes and Company established by royal permission for the trade with the Indian tribes suffered damages to the greatest amount; that during the residence of the Colonel Nicholes the said Indians did carry away and secrete a good many of their negro slaves, this taking place when Naubine became their chief and compelled them to steal negroes and commit other crimes and misdeeds; that they carried away the number of cattle, oxen, and horses designated, reducing to ruin the factories which they had established on the rivers of Apalachicola and Perdido, and although Government made several demands for the restitution of the large amount of goods taken from Forbes and Company nothing was obtained, the firm being entitled to claim them from the Sovereign; that there is no doubt they may amount to the sum of 100,000 asked by them by an aproximate calculation. Likewise that there is no doubt of the important services which they have rendered at all time to the troop of that garrison, and to the King, our Lord, of which there must exist evidence in the secretary of this Government. And he further states that all that he says is the truth under oath; that he is of age; that he does not come under the general provisions of the law of which he is apprized.

And all of this was read to him, to which he assented and signed; to which I certify.

FRANCISCO GUERRERO.

Before me,

MIGUEL MENDEZ.

430 In the city of Habana, on the same day of the month and year aforesaid, in virtue of the orders received, I went to the house of Don Franco Moralez, captain of the regiment of Louisiana, of whom I received the oath, which he took in the usual form, to tell the truth, and, having examined him after the manner as the preceding witnesses, he said: That having resided a long time in the place of Panzacola, and particularly during the movements and actions between the American Indians and the English subjects of Great Britain, he knows and he is certain that the house of Forbes and Company, established there by royal permission to trade with the Indian tribes, has suffered the injuries which are stated in the writing of the first, for it is evident that during the residence of Colonel Nicholes the said Indians did carry away and kill many negro's, their slaves, this happening while Naubian [Nauvine] made himself their chief, and compelled them to steal the negro's and to commit divers other crimes and misdeeds. That they carried away the number of cattle, oxen, and horses designated, reducing to ruin the factories which they had established on the rivers of Apalachicola and Perdido, and although that government made many demands for the restitution of the large amount of goods taken from Forbes and Company nothing was obtained, the firm being entitled to claim them from the Sovereign. That there is no doubt but that they may amount to the sum of $100,000 asked by them by an approximative calculation.

Likewise that there is no doubt of the important services which they that ask have at all times rendered to the troop of that garrison, and to

the King our Lord, of which there must exist evidence in the secretary of this government. And he further says that all that *that* he has here said is the truth under oath, and that he is of age, and that he does not come within the general provisions of the law, of which he is apprized. It was read to him, to which assented and signed it, of which I certify.

FRANCO DE PAULA MORALEZ.

Before me,

MIGUEL MENDEZ.

431 HAVANA, *January 10th, 1818.*

Seen: Together with the foregoing papers, which were ordered to be sent to the consulta by a provision of the 6th of the present month considering the merits and who produces this record (expediente), in which the house of Forbes & Company, established by royal permission in the plaza of Panzacola to trade with the Indian tribe, claims an indemnification of 100,000 dollars for effective losses from damages and injuries sustained during the movements and actions between the said American Indians and *and* the English subjects of Great Britain whilst Colonel Nicholes remained there and Naudbine rendered himself chief of them, instigating them to commit every sort of robbery, for which, at that time, the due demands were made without obtaining any restitution to the house of Forbes for the negro's and other animals and goods of which they were unjustly deprived, and considering on the other hand that the tract of land that they ask to be adjudicated them in payment or compensation for the said sum never can amount to this sum in a very thinly settled province in which lands remain uncultivated for want of persons to attend to their culture, according to the information which has been taken, and particularly that of the surveyor-general of His Majesty, Don Vincente Sebastian Pintardo, and that Don John Forbes, chief and principal partner of that house, by taking possession of it will be able to benefit the province and bring colonists to establish themselves in it, rendering fruitful for the benefit of the State what now is desert and sterile, which considerations have moved the worthy soul of His Majesty, in his royal cedula of the 10th of August, 1815, to offer lands to those who would choose to settle in the island of Porto Rico as the best means to be employed for the increase of the settlement. His excellency immediately said that, using the power belonging to him, he applied and had applied the said land to John Forbes and Company, agreeable to the boundaries and points designated in the writing of the first sheet remaining, by the same deprived of all rights to claim from the royal exchequer the losses and injuries which they may have experienced, for by its value, whatever it may be, they remain compensated for all, and the claim of indemnification which they had established stand cancelled, and let
432 the commandant of the said place of Panzacola, in virtue of this resolution, put him in quiet and peaceable possession of the aforesaid land, for which object his excellency (this word uncertain from a blot) ordering that the necessary evidence be given to the house of Forbes, the original being filed in the archives.

Tax 32 rials, paid.

DEL MONTE.

CIENFUEGOS.
MIGUEL MENDEZ.

I hereby certify that on the same day I communicated all this to Don John Forbes.

MENDEZ.

YOUR EXCELLENCY: The house of Forbes and Company, merchants, in Pensacola, through their attorney in this city say to your excellency that in the midst of the disturbances and confusion caused in the public archives at that place by the entrance and possession which the American arms took of it, he has kept the original act or dispatch which Don Joseph Masot, civil and military commandant of the province of Florida, did dispatch in consequence of the one sent to him by this Superior Government upon the indemnification of damages claimed by the petitioners and wishing to receive two authenticated copies (testimonies) one to annex to the record (expediente) which exists in Pensacola and the other to keep, and therefore he supplicates your excellency to order the escribano of Government to furnish him with the two copies he asks, for which he implores as a favor.

COLIN MITCHELL.

Habana, December 17th, 1818.
(In the margin of the above is written:)
Let this be shown to the assessor-general. CIENFUEGOS.

433 HAVANA, *December 18th, 1818.*

Seen: The aforesaid document which has been presented. Let the house of Forbes and Company be furnished with the copies (testimonials) requested.
Tax, 16 rials, paid.

CIENFUEGOS.
DEL MONTE. MIGUEL MENDEZ.

I certify that on the same day of the month and year aforesaid I communicated this to Don Colin Mitchell.

MENDEZ.

434 D. Jose Massot, colonel of the Royal Corps of Artillery, civil and military commandant of the province of West Florida, subdelegate of the exchequer therein, &c., for all and in compliance with the superior decree which preceeds of his excellency the captain-general of this province, of the tenth of the present month and year, whereby, as indemnification, he grants to the house of Forbes & Co., a tract of land situated beween the river Apalachicola, towards the E., the Chocta-hache towards the W., the sea to the S. and towards the N. by a line that should commence opposite the creek known by the name of Aguadulce or Sweet Water Creek, situated on the E. part of the Apalachicola, about 3 1 2 miles north of the place with the name of Allum Bluff, and is to run W. until it meets the Choctahache and from there follow the course of this river until it empties itself in St. Rosa Bay, from there following the E. shore of this until the sea, its high tide making its S. boundary, till meeting those of the lands that the said house already has, W. of the Apalachicola, and begins opposite the point, also W. of the island of St. Vincente, from there following the boundaries of said lands until the Apalachicola, then the course of said river till meeting the starting point,

that serves as its N. boundary, opposite to the already named Arroyo de Aguadulce. Therefore, and in compliance with the already named decree of his excellency of the tenth of the current year, I put the said house of Forbes and Company in possession of the tract of land described, and in consequence I declare and impart full and direct dominion to the said house, of the said land, that as their property they may enjoy it, possess, sell, or transfer on the terms that may best suit them, in faith of which I order the present given, sign of my hand, sealed with my arms, and countersigned by the undersigned secretary of this government and subdelegation, the 23rd day of January, 1818.

JOSE MASSOT. CARLOS REGGIO. [L. S].

It is in conformity with its original that I returned to the party to which it refers, and in virtue whereof, I order the present given.

Habana, December 19th, year of 1818.

(Signed) MIGUEL MENDEZ.

435 LEGALIZACN.

The notaries public of the King our Lord and of his Royal College in this city, who here sign and rubricate, certify and give faith that Dn. Miguel Mendez, by whom also appears authorized the preceding testimony, is also a notary public of His Majesty, deputy of the mayor of government and the council, faithful, loyal, and trustworthy, makes use of and exercises with approval, and to such as him full faith and trust has always been given in both courts. Habana, December nineteenth, one thousand eight hundred and eighteen. (Signed) Juan de Dios Corona. (Signed) Jose Manuel Navarro. (Signed) Jose Nuno de Cueto. [L. S.]

It is in conformity with its originals that, in order to give this copy, were presented to me by Dn. Colin Mitchell, to whom I returned them, whom I now address, and upon whose request I now give the present. Habana, 23rd of June, one thousand eight hundred and twenty-four.

(Signed) Gabl. Ramirez.

436 The notaries public of the King our Lord and of the Royal College of this city, who here sign and rubricate, certify and give faith that Dn. Gabriel Ramirez, by whom the preceding testimony is authorized, is a notary public of the number of this city, faithful, loyal, and trustworthy, makes use of and exercises his functions with general approval. And that it may appear we give the present sealed with the seal of our Royal College. Haba., date, ut supra. Three signed. (Signed) Jose Leal. Manuel de la Torre. Jose Lorenzo Rodriquez.

[ARMS]

Don Francisco Dionisio Vives, Grand Cross of the Royal and Distinguished Spanish Order of Charles 3rd and of the Royal American Order of Elizabeth and the Catholic and of the Military of San Hermenegildo, third order Knight of the Royal of San Fernando, several times declared Father of the Country, condecorated with the Arms of fidelity, the Star of the North, and for other nine deeds of war, Lieutenant-General of the Royal Armies, Governor of the City and Province of Habana, Captain-General of the Island of Cuba, President of the Royal Audience at the

city of Puerto Principe in the same Island and of the Provincial Assembly of the Royal American Order of Elizabeth the Catholic, Juez de Alzados of the Tribunal of the Royal Consulate and President of the Financial Council Government of same, Subdelegate of the Superintendency General of the Post-Office and Express and of the Royal Company of Habana, &c., &c., &c.

I certify that the signatures that give validity of the enclosed testimony of Dn. Gabriel Ramirez, Dn. Jose Leal, Dn. Manuel de la Torre and Dn. Jose Lorenzo Rodriguez are of the hand of the same and such as are called notaries public, and of the number of this city, to whom full faith and confidence is due, in or out of judgment. And that it may appear, I give the present at Habana, the eleventh of February, eighteen hundred and twenty-nine. (Signed) Frco. Diono. Vives.

E. [ARMS].

437 ST. AUGUSTINE, FLORIDA, *March 4th, 1904.*

I, Annie Averette, do hereby certify that I have lived in the island of Cuba many years and am familiar with the Spanish language and the English language, and versed in the translation from the Spanish into English; that I have carefully gone over the papers heretofore first attached in Spanish, and made a translation thereof, which is hereto second attached, and that the said translation is true, correct, and complete, according to the best of my skill, knowledge, and belief.

ANNIE AVERETTE.

Sworn to and subscribed before me this March 7", 1904.

W. WALLACE SNOW,
Notary Public.

My commission expires Nov. 12", 1905.

(The foregoing is endorsed as follows:) "210. P. 225. L. 1. U. S. District Court Southern District of Florida. V. Dalcour vs. U. S. Filed in evidence and marked "Exhibit V." R. B. Archibald, master. Filed Mar. 17, 1904. E. O. Locke, clerk."

438 EXHIBIT W.

(Preceding the *the* following is a document of 5 pages in Spanish, omitted by consent of counsel, and the following, which is a translation, is by consent of counsel substituted therefor, after the following certificates, viz:)

I, Joseph E. Caro, keeper of the public archives of West Florida, duly qualified and commissioned by the President of the United States of America, do hereby certify the foregoing five pages to contain a true and complete transcript from the original proceedings instituted by John Innerarity now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, in the city of Pensacola, this 15th September, in the year of our Lord 1830.

[OFFICIAL SEAL.] JOSEPH E. CARO,
Keeper of the Public Archives.

I, A. M. McMillan, clerk of the Circuit Court of Escambia County, Florida, and as such having in my custody the files and records of the United States Superior Court of the Western District of the Territory of Florida, do hereby certify that the foregoing 4 pages constitute a true and correct copy of a paper and its endorsements in the case of John Innerarity and James Innerarity and the heirs of John Forbes against the United States, as the same remains of file and of record in said cause in said court.

In witness whereof I have hereunto set my hand and affixed my official seal this 2nd day of March, A. D. 1904.

A. M. McMillan, *Clerk.*

(Then follows said translations, i. e:)

439 F. PETITION.

Señor Governor: Dn. Juan Innerarity, partner in the house Dn. Juan Forbes & Co., with the due respect, before your excellency appears and says: That two or three Anglo-American vagabonds, with neither its permission or consent, nor of any of its members, have settled in the lands they own between the rivers Apalachicola and Chocta Hache, on the eastern shore of the last; and, anyhow, as if the deponent should omit mentioning it, it could perhaps be considered in the future as a tacit consent on his part, and on the strength thereof these intruders obtain or pretend right over the lands they may have cultivated or settled; anxious to avoid this extreme, keeping free and unquestionable entirely, and in any time, the exclusive right that his house has to the whole of these lands, of your excellency begs to deign, supporting him in this property, issue to the effect, your superior decree, so that without excuse and immediately, these intruders remove themselves and leave the locations they may have settled or cultivated; which is favor and justice that he hopes to receive of the upright that your señoria exercises.

I swear not to proceed from malice and in the necessary, &c.

Juan Innerarity.

Panzacola, 27th of March, 1819.

(Decree:)

As this party requests; making the persons who are settled in the territory of his property, without his consent, understand to vacate immediately; and if they should have something to say in their favor, to appear before this tribunal, where they will be heard in justice.

Callava.

440 ANOTHER PETITION.

Dn. Juan Innerarity, in the name of the house of Dn. Juan Forbes & Co., which he represents, in the best form of right, before your lordship deposes: That having, under date of the 27th of last March, fallen back to the request presented a decree of your lordship that the intruders that were settled without the permission of this Government nor ours on the tract of lands of our property, from the river Chocta Hache and to the Apalachicola, should vacate them immediately and the already known parties not having obeyed nor complied with the intimations made to them, of your lordship sincerely begs to deign to issue a decree, confirma-

tory of the first, and that it may have the proper efficacy entrust its execution to a person who may be of the liking of the tribunal, avoiding in this way the damages that would result from our inaction; and that it may in all times appear that I be provided with the necessary testimonies of the steps taken towards attaining what I solicit; that being to do justice. I swear in the necessary, &c.

JUAN INNERARITY.

Panzacola, 30th of September, 1819.

(Decree:)
Let testimony of the deeds of ownership that this party has over the lands to which the request refers be put in continuation and it will be furnished. Callava. Juarez. Domo Sausa. Jose Caro.

(Notif'n:)
On the same day we made it known to Dn. Juan Innerarity, of which we give faith. Sausa. Caro.

441 (Another decree:)
Panzacola, 7th of October, 1819. Seen: And in consideration of the lately represented by Dn. Juan Innerarity, let, with the due formality, the corresponding order be issued that all and any parties that may have occupied or stationed themselves on lands of these belonging to Dn. Juan Forbes & Co., as is assured by the titles of property that have been had at sight, leave them immediately, not having settled thereon by special agreement made with the said Messrs. Forbes & Co.; informed that upon not doing it in the peremptory term of ten day after making this order known, proceedings shall be made in what may be proper by right; its execution being entrusted to Dn. Jonathan Bunker or to the person who may be worthy of trust of the member who represents in the name of the expressed house, to whom will be delivered, for the better execution of the repeated order, the testimony of the titles of ownership that this party has exhibited, which will be unfilled for this purpose, so being noted in these proceedings, by the assistant witnesses. Callava. Juarez. Domingo Sausa. Joseph Caro.

(Notif'n:)
On the same day we made it known to Dn. Juan Innerarity, of which we give faith. Sausa. Caro.

NOTE.—That under date of this day, order was given to the persons therein named, and that all may appear, we put it as procedure, of which we give fair.

DOMINGO SAUSA. JOSEPH CARO.

442 Appraisement of costs caused in these proceedings as per the tariff:

To the Sr. Governor, fees	8 reales.
To the Sr. Auditor of War, idem	24 ras.
To the assistant witnesses	16 ras.
Make $6.00	48 ras.

Panzla. 13th of October, 1819.

DOMINGO SAUSA.

PENSACOLA, *Florida, March 1, 1904.*

I, I. J. Diaz, do hereby certify that I am a native of the Republic of Mexico, and familiar with the Spanish language and the English language, and versed in the translation from the Spanish into English; that I have carefully gone over the paper heretofore first attached in Spanish, and made a translation thereof, which is hereto second attached, and that the said translation is true, correct, and complete according to the best of my skill, knowledge, and belief.

I. J. DIAZ.

Sworn to and subscribed before me this March 1, 1904.

F. C. LE BARRON, *Notary Public.*

My commission expires Oct. 27, '07.
[NOTARIAL SEAL.]

(The foregoing is endorsed as follows:) "210, 225. L. 1. U. S. District Court, Southern District of Florida. W. Dalcour et al. vs. U. S. Filed in evidence & marked 'Exhibit W.' R. B. Archibald, master. Filed Mar. 17, 1904. E. O. Locke, clerk."

443 EXHIBIT X.

Dn. José Callava, caballero de la Real y Militar Orden de S. Hermenegildo, condecorado con la cruz distincion de la Batalla de Almonacid, Teniente Coronel de los Rs. Extos., Comandte. Político y Militar de la Provincia de la Florida Occidental y Subdelegado de real hacienda en ella, &ª.

Por quanto á lo nuevamente representado por Dn. Juan Innerarity, mando y ordeno á todos y a qualesquierá individuo que hayan ocupado ó se hallan establecidos en los terrenos pertenecientes á Dn. Juan Forbes y Compa., situados entre los ríos de Apalachicola y Chactahache, no siendólo por convenio particular celebrado con los referidos Sres. Forbes y Compa., lo desocupen precisamte, en el perentorio término de diez días después de notificada esta orden y de no verificarlo en el expresado término se procederá a lo que hubiere lugar por derecho, cometiendo la notificacion y execucion de esta á Dn. Johathan Bunker, y para la major inteligencia se traducirá en idioma inglesa por Dn. José Ignacio Cruzat, cuya traducion extendrá y firmará á continuacion de esta mi mandamiento.

Dado en Panzacola, firmado de mi mano, sellado con el sello de mis armas y refrendado por el infrascripto secretario de esta Gobno. á ocho de octubre de mil ochocientos diez y nueve.

JOSÉ CALLAVA,
CARLOS REGGIE.

Dn. Joseph Callava, Knight of the Royal & Military Order of St. Hermenegildo, condecorated with the cross of distinction of the Battle of Almonacid, Lieut. Colonel of the Royal Armies, Civil & Military Governor of the Province of West Florida, and subdelegate of the Department of Finance, &c., &c.

In consequence of the renewed application of John Innerarity, esqr., I order and command all and singular, person or persons, who may have occupied or established themselves in the lands of territory belonging to

Mess. John Forbes & Company, situated and bounding by and between the rivers Chacta Hache and Apalachicola, unless by special permission of or agreement entered into with the said John Forbes & Com-
444 pany that they shall definitely remove from the same within the peremptory term of ten days after the notification of this order, and in case of noncompliance within the time specified, they will be proceeded against according to law. The notification and execution of this order is entrusted to Mr. Jonathan Bunker, and for the better comprehension thereof it is to be translated into English by Don Jose Ignacio Cruzat, which translation he is to extend and sign in continuation of this my order.

Given at Panzacola, signed with my hand, and sealed with the shield of my arms, and countersigned by the undersigned secretary of this Government this eighth day of October, one thousand eight hundred and nineteen.

(Signed) JOSE CALLAVA.
(Countersigned) CARLOS REGGIE.

I, Dn. Jose Ignacio Cruzat, sublieutenant of the regiment of Louisiana and annexed to the secretary's office of this Government, specially charged with the translation of official documents thereof, in virtue of the preceding order, do hereby certify and declare that the foregoing is a just, true, and faithful translation of same. In witness whereof I hereunto affix my signature in Pensacola, day and date aforesaid.

By his excellency's command.

(Signed) JOSE IGO. CRUZAT.

Dn. José Callava, caballero de la Real I Militar Orden de S. Hermenegildo, condecorado con la Cruz de destincion de la Batalla de
445 Almonacid, Teniente Coronel de los Reales Extos., Comandante Politico y Militar de la Provincia de la Florida. Occidental y Subdelegado de Real Hacienda en ella, &c., &c.

Certifico, que la copia que antecede es conforme a un original, y para que asi conste, doy la presente en Barrancas, firmado de mi mano, sellado con el Sello de mis armas, referendado por el infranscripto Secretario de este Gobierno a veinte y dos de Octubre de mil och cientos dies y nueve.

[SEAL.] JOSE CALLAVA.
CARLOS REGGIE.

I, A. M. McMillan, clerk of the Circuit Court of Escambia County, Florida, and as such having in my custody the files and records of the United States Superior Court of the Western District of the Territory of Florida, do hereby certify that the foregoing 3 pages constitute a true and correct copy of a paper and its endorsements in the cause of John Innerarity and James Innerarity and the heirs of John Forbes against the United States, as the same remains of file and of record in said cause in said court.

In witness whereof I have hereunto set my hand and affixed my official seal this 2 day of March, A. D. 1904.

A. M. MCMILLAN, *Clerk.*

Dn. Jose Callava, Knight of the Royal and Military Order of St. Hermenegildo, condecorated with the cross of distinction of the battle of Almonacid, lieutenant-colonel of the royal armies, civil and military commandant of the province of West Florida, and subdelegate of the department of finance therein, &c., &c.

Certify, that the foregoing copy is in conformity with an original, and that it may so appear I execute the present at Barrancas, signed with my hand, sealed with the seal of my arms, and countersigned by the undersigned secretary of this government, the twenty-second of October, one thousand eight hundred and nineteen.

[SEAL.] JOSE CALLAVA.
CARLOS REGGIO.

446 PENSACOLA, FLORIDA, *March 1, 1904.*

I, I. J. Diaz, do hereby certify that I am a native of the Republic of Mexico, and familiar with the Spanish language and the English language, and versed in the translation from the Spanish into English; that I have carefully gone over the paper heretofore first attached in Spanish, and made a translation thereof, which is hereto second attached, and that the said translation is true, correct, and complete, according to the best of my skill, knowledge, and belief.

I. J. DIAZ.

Sworn to and subscribed before me this March 1, 1904.

[NOTARIAL SEAL.] F. C. LE BARRON,
Notary Public.

My commission expires Oct. 2nd, '07.

(The foregoing is endorsed as follows:) "210. 225. L. 1. U. S. District Court Southern District of Florida. X. Dalcour vs. U. S. Filed in evidence and marked 'Exhibit X.' R. B. Archibald, master. Filed Mar. 17, 1904. E. O. Locke, clerk."

447 EXHIBIT 1.

Extracts from journal of the Superior Court for the District of West Florida.

FRIDAY, *December 11th, 1829.*
(Page 470.)

Present, Hon. H. M. Brackenridge, judge.

JOHN INNERARITY FOR JOHN FORBES & CO.
vs.
THE UNITED STATES.

And now at this day comes the said petitioner by his counsel, and on motion it is ordered that he have leave to amend his petition heretofore filed herein.

MAY 12th, 1830.
(Page 491.)

Present, the Honorable Henry M. Brackenridge, judge.

JOHN FORBES & Co. } On petition.
vs.
THE UNITED STATES. }

This cause being set down and now called for hearing, the petitioners having announced themselves ready for trial, the United States, by their attorney, moved that the same be continued. Whereupon, and on debate of the matter, and it appearing to the satisfaction of the court from the cause shown by the United States that the same ought to be continued, it is therefore considered by the court now here that the same be continued at the instance of the said United States until the second Monday of September next.

448

AUGUST 30, 1830.
(Page 493.)

Present, Honorable Henry M. Brackenridge, judge.

JOHN FORBES & Co. } On petition.
vs.
THE UNITED STATES. }

This day came the *the* parties, by their solicitors, and the complainants on affidavit presented and filed are granted a subpœna duces tecum against Richard K. Call, esq., of the city of Tallahassee, Leon County, Florida, returnable the second Monday of September next.

JOHN FORBES & Co. } On petition.
vs.
THE UNITED STATES. }

On motion of the solicitors for the petitioners it is ordered that the clerk of the United States Court for the county of Leon furnish this court with a copy of the list of grants of lands made by the late Government of Spain in the two Floridas, which said list, it is alleged, has been furnished by the court of Spain to the Government of the United States, and is filed in the office of said court among the exhibits of a cause therein depending, in order that the same may be used for such purposes as the court shall judge proper on the trial of said above-entitled cause.

* * * * * * *

MONDAY, *September 20th, 1830.*
(Page 497.)

Present, Honble. Henry M. Brackenridge, judge.

JOHN AND JAMES INNERARITY AND THE heirs of John Forbes, deceased, } On petition.
vs.
THE UNITED STATES. }

449 This day came the parties by their counsel and the petitioners by their counsel, filed a copy of a letter from the captain-general

of the island of Cuba to R. K. Call, esquire, and a copy of a list of grants furnished to the United States by the King of Spain, and the argument of the cause commenced on the part of the claimants.

JOHN & JAMES INNERARITY AND THE heirs of John Forbes, deceased, *vs.* THE UNITED STATES. } On petition.

This day came the parties by their counsel, and by consent the petitioners filed a certificate of the commission of Don Jose Cienfuegos as captain-general of the island of Cuba, and the argument of this cause was continued on the part of the claimants.

SEPTEMBER 23, 1830.
(Page 498.)

Present, Honbl. Henry M. Brackenridge, judge.

JOHN & JAMES INNERARITY AND THE heirs of John Forbes, deceased, *vs.* THE UNITED STATES. } On petition.

The argument of this cause was resumed by the counsel on the part of the United States and continued until it was
Ordered, that court adjourn until to-morrow morning, nine o'clock.

SEPTEMBER 25TH, 1830.

Present, Honbl. Henry M. Brackenridge, judge.

JOHN & JAMES INNERARITY AND THE heirs of John Forbes, deceased, *vs.* THE UNITED STATES. } On petition.

450 The argument of this case was resumed by the counsel on the part of the United States and concluded.

WEDNESDAY, *September 29th, 1830.*
(Page 499.)

Present, the Honbl. Henry M. Brackenridge, judge.

JOHN & JAMES INNERARITY AND THE heirs of John Forbes, deceased, *vs.* THE UNITED STATES. } On petition.

This day came the parties by their counsel, and the parties being fully heard both on the part of the petitioners and of the United States in argument, but the court not being sufficiently advised herein, took time, &c.

THURSDAY, *September 30th, 1830.*

Present, the Honbl. Henry M. Brackenridge, judge.

JOHN & JAMES INNERARITY AND THE HEIRS of John Forbes, deceased, petitioners,
vs.
THE UNITED STATES, RESPT. } On petition.

On motion of the counsel for the United States, it is ordered that either party be allowed to file on or before the first day of the next term with the clerk such supplementary documentary evidence, or such affidavits accounting for their nonproduction, as they may deem proper, subject to the legal objections of either party to the receiving the same in evidence. The petitioners presented the affidavit of John Innerarity, which is filed accordingly.

451 (Page 500)

JOHN & JAMES INNERARITY AND THE HEIRS of John Forbes, deceased, petitioners,
vs.
THE UNITED STATES, RESPT. } On petition.

This day came John de la Rua, witness on the part of the defendants, into open court, and requests that so much of his deposition taken before the commissioners in the city of Pensacola on the eleventh day of September and filed in this case as relates to the signature of Governor Zuniga, be surpressed, having originated in mistake, which is accordingly done.

This is endorsed: "U. S. District Court, Southern District of Florida. No. 1. Filed in evidence by defendant, and marked 'Exhibit No. 1,' Dec. 30, 1903. R. B. Archibald, special master. Filed Mar. 17, 1904. E. O. Locke, clerk."

* * * * * * *

454 EXHIBIT 3.

The house of John Forbes & Company.

YOUR EXCELLENCY: Don John Forbes, partner and director of the house of Forbes & Company, established in the place of Pensacola, in virtue of a royal privilege for conducting their trade and particularly with the Indians of this province, comes before your excellency in the most proper manner and says: That during the last war held between the American Indians and the English subjects of Great Britain their interests have suffered, as well in planting establishments as in their stores, effects, &c., more than any exaggeration could afford an idea of. Many of the slaves belonging to the company were carried away and harboured by the Indians while the Col. Nicholas remained there, and although the government of Pensacola having ascertained the fact com-

plained of the violent spoliations of the slaves it was all in vain, for they were not returned.

In order to facilitate their restitution, without causing to the royal treasury a loss for which it was and is responsible, my company armed barques on several occasions at their own expense, with no other object than to recover them. In the first vessel that went out for that object, Government sent with a commission Captain Don Benigno Calderon, of the regiment of Louisiana, together with other officers; after that on two other occasions private persons, in order not to take the public officers from their posts. However, the results of these missions was always not to obtain the restitution of the property carried away. The aforesaid house deputed Edmund Doyle and William Hambly for the aforesaid object, giving them large gratuities for their trouble, and compensating the latter for the loss which he suffered of all he possessed.

Besides all this, Woodbine instigated the Indians, of whom he had constituted himself a chief, to steal negroes, and we were compelled to prosecute him, instituting for that purpose a criminal suit which occasioned immense expenses without any good result, for he had the art to take occasion to make his escape from the hands of justice in such way that all the efforts and sacrifices made by the house to save to Government these losses have served only to increase them. In the same time
455 of disorder and confusion the said Indians carried away about one thousand head of cattle, the property of the company; losing at another place thirty-eight horses and two mules, and at last a troop of the same set fire to the stores of the house at Apalachicola, carrying away with them eleven of our slaves, with all our horses, oxen, and other utensils and goods which they found there, without leaving anything, and carrying as prisoners Doyle and Hambly, who with reason and justice had demanded of the house indemnification for the damages as well as personal injuries which they have experienced in proceedings as strange as unheard of.

So many losses, which included the labors of the negroes, the capital and interest of the money, are not less by a moderate calculation than one hundred thousand dollars, are to be indemnified by this Superior Government to which that of Pensacola is subordinate, either in money or by compensating the company with someting else equivalent. The losses are positive, they are actually existing, and it is necessary only to look at the correspondence which took place upon that subject between the commandant of the province and this captain-generalcy to have no doubt of the truth of this my exposition, upon which likewise I can give satisfactory evidences from the surveyor-general, Don Vicente Sebastian Pintado, Don Francisco de Arroyo attached to the secretary of this intendency, and other individuals of equal respectability who were in Pensacola in the service of His Majesty.

Considering then on the one side how difficult it will be to pay me in actual cash, as is my due, the one hundred thousand dollars for which most incontestibly my house is creditor on account of the well-known scarcity of money sufferred by the public treasury, and on the other side considering the great services which at all times the house has rendered to the sovereign by whose means and help it may be said with truth that troops of that garrison have been supported, having yet due and to

receive more than eight thousand dollars, the population of the province would be considerably augumented without comparison of the said sum if full dominion were given to the said house of Forbes which I represent over a tract or parcel of land which is now vacant and begins at the creek known by the name of "Sweetwater Creek," empting into
456 the Appalachicola River and following a course due west to the Choctawhatchie, following the course of this river to its mouth in the Bay of Santa Rosa's Island, and following thence east on the shore of the said bay and of the sea to the line of the lands west of the Appalachicola already ceded by the Indians to our house, always following the western line of them and ascending the course of the said river to the point of its commencement.

I know very well that the aforesaid land, which in a great many parts is not susceptible of cultivation, will not compensate for even one-fourth part of the sum I claim, for the losses and damages sustained, as I have already herein stated, amount to more than one hundred thousand dollars. But what is to be done? This will be to me an additional motive to increase the love and constant loyalty that not only I but by partners profess to our sovereign, not wishing His Majesty to support the loss of the damages of such a large disbursement, and being content that with time and our industry alone it may be made productive of benefit to the said province and tend to the increase of his royal exchequer.

Wherefore I supplicate Your Excellency that, having in view what is here recommended, what is shown by the correspondence between the commanderio of Pensacola and this Government upon the losses above related and the information which I shall immediately furnish to prove them, to be pleased to adjudicate in fee simple (dominio pleno) to the firm of Forbes & Company, of which I am chief and which I represent, the land or tract of land designated by the boundaries and points already described, taking the provision necessary to giving us possession, with which we shall consider ourselves satisfied, contented, and compensated for the claim of damages and indemnifications asked for. This is justice, and I offer to make oath that it is not through evil design and to do anything else that may be necessary, &c.

JOHN FORBES.

PEDRO A[illegible] DE AYALA.

Havana, 5th of January. Let this be carried to the as'es'or-general to provide what may be necessary.

(Signed) CIENFUEGO,
MIGUEL MENDEZ.

I certify that in the Havana on the same day I communicated this to Don John Forbes.

MENDEZ.

457 Havana, 5th of January, 1818. Seen. Let the information which the house of Forbes and Company asks for in the foregoing petition be received by the present escribiano, to whom charge is given of it, and let him have the necessary assistance to give him the usual political form, and when completed let it be brought with the cited papers. The tax of 24 rials paid.

DEL MONTE. CIENFUEGO. MIGUEL MENDEZ.

I certify that on the same day of the same month and year that I communicated the same to Don John Forbes.

Tax of 10 rials paid. MENDEZ.

February 14,
Havana, January 7th, 1818.

Let this be accomplished without injury to this jurisdiction. A flourish.

RAMIREZ. CAMPUSANO. MIGUEL MENDEZ.

In the city of Havana, on the 14th of February, 1818, in virtue of 7th of January,
the orders received, I went to the house of Don Francisco Gutierrez de Arroyo, formerly secretary of the intendency which used to be in West Florida and now annexed to the secretary of this superintendency general subdelegated, from whom I received the oath, which he took according to the usual form to tell the truth, and examined him concerning the John Forbes
tenor of the first sheet of the paper produced by Don (Colin Mitchell as attorney of the house of Forbes and Company, merchants, of Pensacola). After having well ascertained its meaning, he said: That having resided in that place since February, 1806, discharging the duties of his office, he can assure, as an ocular witness, that the facts on which rest those who ask for an indemnification of damages are so positive and certain that there is no disinterested person in that province who would not admit them; that their losses were enormous as well in the said place as in the factories which they had established in the rivers of Appalachicola and Perdido, that the Indians carried away the slaves they had on their farms, hiding them while the Colonel Nichols remained there, the demand of Government not being sufficient to obtain their restitution nor the commissions which were afterwards given for that object to Captain Benigno Calderon and other of his officers and to other private individuals,
so that in the belief of this present deponent the sum of one hundred
458 thousand dollars asked for the damages related is not exaggerated,
comprehending more than a thousand head of cattle, oxen, and horses, and other utensils and goods robbed from the house of Forbes by the aforesaid Indians, for which they have not received the smallest compensation from our Government, it being the only house in Pensacola which has rendered important services to our sovereign.

And he says further that what he stated is the truth under oath, that he is fifty-five years old, and that he is not comprised in the generalities of the law of which he was apprised. This was read, and he agreed to its contents and signed it. All of which I certify.

FRANCISCO GUTIERREZ DE ARROYO.

Before me.

MIGUEL MENDEZ.

In the city of Havana, on the day, month, and year aforesaid, I went to the house of Don Vicente Sebastian Pintedo, surveyor-general for his Majesty, from whom I received the oath, which he took in the usual form, to tell the truth, and having examined him as I did the preceding witness, he said: That having remained in Pensacola he knows and is

certain that, during the movements and actions between the American Indians and the English subjects of Great Britain, the house of Forbes and Company, established there by royal permission to treat with the Indians, suffered damages to the greatest amount as well in Pensacola as in Perdido and in Appalachicola by the events and causes which they had narrated, and that although the deponent can not estimate to how much their damages and injuries did amount, still he believes it to be a considerable sum; and likewise, that they have at all times rendered important services to the troops of that garrison and to the King, our lord (on which subject there must exist evidence in the secretary of this Government), and he answers that all he has stated is the truth under oath, his being of age and not comprised in the general provisions of the law of which he was apprised.

This was read to him and he assented to it and signed the same, which I certify.

VICENTE SEBASTIAN PINTADO.

Before me.
MIGUEL MENDEZ.

459 In the city of Havana on the day, month, and year aforesaid I went to the house of Don Francisco Guerrero, captain of the regiment of Louisiana, from whom I received the oath in the usual form, which he took, of telling the truth, and being examined as the preceding witnesses he said: That having resided a long time in Pensacola that he knows and is certain that during the movements and actions between the American Indians and the English subjects of Great Britain the house of Forbes and Company, established by royal permission for the trade with the Indian tribes, suffered damages to the greatest amount; that during the residence of the Colonel Nichols the said Indians did carry away and secrete a good many of their negro slaves, this taking place when Naubine became their chief and compelled them to steal negroes and commit other crimes and misdeeds. That they carried away the number of cattle, oxen, and horses designated, reducing the [sic] ruin the factories which they had established on the rivers of Appalachicola and Perdido, and altho' government made several demands for the restitution of the large amount of goods taken from Forbes and Company nothing was obtained, the firm being entitled to claim them from the Sovereign. That there is no doubt they may amount to the sum of one hundred thousand dollars asked by them by an approximate calculation.

Likewise, that there is no doubt of the important services which they have rendered at all times to the troops of that garrison and to the King, our lord, of which there must exist evidence in the secretary of this Government; and he further states that all he says is the truth under oath; that he is of age; that he does not come within the general provisions of the law of which he is apprised. And all this was read to him, to which he assented and signed, to which I certify.

FRANCISCO GUERRERO.

Before me.
MIGUEL MENDEZ.

In the city of Havana on the same day of the month and year aforesaid, in virtue of the orders received I went to the house of Don Francisco Morales, captain of the regiment of Louisiana, of whom I received the oath, which he took in the usual form, to tell the truth, and having examined him after the same manner as the preceding witnesses, he
460 said that having resided a long time in the place of Pensacola, and particularly during the movements and actions between the American Indians and the English subjects of Great Britain, he knows and he is certain that the house of Forbes and Company, established there by royal permission to trade with the Indian tribes, has suffered the injuries which are stated in the writing of the first, for it is evident that during the residence of Colonel Nichols the said Indians did carry away and hide many negroes—their slaves—this happening while Naubine made himself their chief and compelled them to steal the negroes and commit divers other crimes and misdeeds. That they carried away the number of cattle, oxen, and horses designated, reducing to ruin the factories which they had established on the rivers Apalachicola and Perdido, and altho' the Government made many demands for the restitution of the large amount of goods taken from Forbes and Company nothing was obtained, the firm being entitled to claim them from the Sovereign. That there is no doubt that they may amount to the sum of one hundred thousand dollars asked by them by an approximate calculation.

Likewise, there is no doubt of the important services which they have at all times rendered to the troops of that garrison and to the King, our lord, of which there must exist evidence in the secretary of this Government. And he further says that all he has here said is the truth under oath, and that he is of age, and that he does not come within the general provisions of the law of which he is apprised. All of which was read to him, to which he assented, and signed it, of which I certify.

FRANCISCO MORALES.

Before me.

MIGUEL MENDEZ.

461 *January 10th*

HAVANA (*February 20th*), 1818.

Seen: Together with the foregoing papers which were ordered to be sent to the consulta by a provision of the 6th of the present month considering its merits and who produces this record (expedientes), in which the house of Forbes & Company, established by royal permission in the place of Pensacola to trade with the Indian tribes, claims an indemnification of one hundred thousand dollars for effective losses from damages and injuries sustained during the movements and actions between the said American Indians and the English subjects of Great Britain whilst Colonel Nicholes remained there, and Naudbine rendered himself chief of them, instigating them to commit every sort of robbery, for which at that time the due demands were made without obtaining any restitution to the house of Forbes for the negroes and other animals and goods of which they were unjustly deprived, and considering on the other side that the tract of land they ask to be adjudicated to them in payment or compensation for the said sum never can amount to this sum in a very thinly settled province, in which lands remain uncultivated for want of persons

to attend to their culture according to the information which have been taken, and particularly that of the surveyor-general of His Majesty, Don Vicente Sebastian Pintudo [sic], and that Don John Forbes, chief and principal partner of the house, by taking possession of it will be able to benefit the province and bring colonists to establish themselves in it, rendering fruitful for the benefit of the State what now is desert and sterile, which considerations have moved the worthy soul of His Majesty in his royal cedula of the 10th of August, 1815, to offer lands to those who would choose to settle in the island of Porto Rico as the best means to be employed for the increase of the settlement.

His excellency immediately said that, using the power belonging to him, he applied and had applied the said land to Don John Forbes and Company, agreeable to the boundaries and points designated in the writing of the first sheet, remaining by the same deprived of all right to claim from the royal exchequer the losses and injuries which they may have experienced, for by its value, whatever it may be, they remain compensated for all and the claims of indemnification which they had established stand canceled. And let the commandant of the said
462 place of Pensacola, in virtue of this resolution, put him in quiet and peaceable possession of the aforesaid land, for which object his excellency (this word written over the word ordered) ordering that the necessary evidence be given to the house of Forbes, the original being filed in the archives.

Tax, 32 rials. paid.

CIENFUEGOS. DEL MONTE. MIGUEL MENDEZ.

I certify that on the same day I communicated all this to Don John Forbes. Colin Mitchell.

MENDEZ.

Habana, and Dec. 18, 1818. Let this be carried to the assessor-general, Cienfuegos.

YOUR EXCELLENCY: The house of Forbes and Company, merchants in Pensacola, through their attorney in this city, say to your excellency that in the midst of the disturbances and confusion caused in the public archives at that place by the entrance and possession which the American arms took of it he has kept the original act or despatch which Don Joseph Masot, civil and military commandant of the province of Florida, did despatch in consequence of the one sent to him by the superior government upon the indemnification of damages claimed by the petitioners and wishing to receive two authenticated copies (testimonios), one to annex to the record (expediente) which exists in Pensacola, and the other to keep. And therefore he supplicates your excellency to order the escribano of Government to furnish him with the two copies he asks for, for which he implores as a favor.

Havana, December 17th, 1818.

COLIN MITCHELL.

(In the margin of the above is written:) Let this be carried to the Assessor-General Cien Fuego.

463 Havana, December 18th, 1818. Seen: The aforesaid document which has been presented. Let the house of Forbes & Company be furnished with the copies (testimonios) requested.

CIENFUEGO.

Tax, 6 rials paid.

DEL MONTE. MIGUEL MENDEZ.

I certify that on the same day of the month and year aforesaid I communicated this to Don Colin Mitchell.

MENDEZ.

Don Joseph Masot, colonel of the Royal Corps of (Engineers) Artillery, civil and military commandant of the province of West Florida, subdelegate of royal finances in the same, &c.

In consequence and execution of the foregoing superior decree of his excellency the captain-general of this province of the 10th of this month and year, by which by way of indemnification he grants to the house of Forbes and Company a tract of land situated between the Appalachicola River to the east, the Choctaw-hatchie to the west, the sea to the south, and to the north by a line beginning opposite the creek known by the name of Agua-dulce or Sweet Water Creek, situated on the east side of the Appalachicola, and about 3 1/2 miles north of the place known by the name of Allum Bluff, and thence running west until it strikes the Choctaw-hatchie, and thence following the sinuosities of the said river to its mouth in the Bay of Santa Rosa, following thence the eastern shore of it to the sea, the high-water mark of which forming the southern boundary until it intersects the line of the lands which the said house has already acquired west of the Appalachicola, and which begins opposite the western end of the island of Saint Vincente, and thence following the line of the said lands to the Appalachicola, and thence following the course and sinuosities of the aforesaid stream until striking the point of departure of said line, which serves as a limit to the north opposite to the aforesaid Sweet Water Creek.

Therefore and in compliance with the aforesaid decree of his excellency of the tenth of the present year, I put the house of Forbes
464 & Company in possession of the tract of land described and in consequence I declare them and put the aforesaid company in full and entire dominion of the land aforesaid, that they may enjoy, possess, sell or alienate it as their own property according to the terms they may best choose.

In faith of which I have caused the present to be despatched signed with my hand, sealed with my coat-of-arms, and countersigned by the underwritten Secretary of this Government and subdelegation on the 23rd of (January) March 1818. Jose Masot—Carlos Reggio—Place of the Seal.

This is in conformity to the original which I returned to the party and to which I refer. And in virtue of what has been ordered I put the present. Havana December 19th 1818. Certified
The word "Engineers" no good Between lines to tenth— Corrected
is rightly erased ~~"January rightly interlined at the 19th line~~
January— Good (Sic.)
flourish— Miguel Mendez.

The Escribanos of the King our lord and of his Royal College of this city who sign here do certify that Don Miguel Mendez, of whom the aforesaid copy (testimonio) is authenticated is likewise an Escribano of His Majesty, Lieutenant Mayor of the Government and Corporation, faithful, loyal and trustworthy and that he practices with approbation, that full faith and credit have always been given in both tribunals to his flourish (semesantes). Havana 19th of December 1818. A flourish A flourish A flourish Juan de Dios Corona—Jose Manl. Navarro—Jose Nuno de Cueto. (Sic.)

~~A true translation~~

~~(Signed) Achillo Murat.~~

(Seal of Notary's & Escribanos of Habana.)

(This paper is endorsed:) "# 210 P 225 L. U. S. District Court Southern District of Florida. Dalcour vs. U. S. Filed in evidence by defendant as Exhibit 3; (Copy) Dec. 30' 1903. R. B. Archibald, spc'l master. Filed Mar. 17, 1904. E. O. Locke, clerk."

465 EXHIBIT 5.

Extracts from record of Superior Court of West Florida in the case of

JAMES AND JOHN INNERARITY AND THE heirs of John Forbes
vs.
THE UNITED STATES. } (P. 296.)

In the above-entitled cause the petitioners, to establish the facts alleged in their petition and in support of the prayer thereof, will rely on the following documents and papers, to wit:

1st. The original grant for the land in controversy lately obtained by the defendants from the proper offices of the Spanish Government and now before the court by process of spa. duces tecum.

2nd. A copy of that grant as recorded in the land office, and the record thereof as filed and recorded in said land office, and the report of the United States commissioners thereon as contained in a printed letter from the Secretary of the Treasury transmitting copies of the reports of the commisioners of land claim in East and West Florida, bearing date the 21 Feb., 1825 (document 111.)

3rd. Report and list transmitted by order of the King of Spain to the United States of all the titles to lands granted by Spain in the two Floridas, from 1801 to the 24 January, 1818.

4th. An official letter from the Capt. Gen'l of the island of Cuba to R. K. Call, esq., agent of the United States, for the purpose of procuring official evidence of such grants as had been made in the Floridas.

(Signed) SAM'L ACRE & BLOUNT,
Sol'rs for Petitioners.

To Messrs. ALLEN & CALL,
Sol'rs for Defts.

Filed 25th September, 1830. (Signed) Geo. F. Baltzell, clk.

* * * * * * *

467 (EX. 6.)

TALLAHASSEE, *5th Apl., 1830.*

DEAR SIR: My visit to the island of Cuba having been protracted until a short time since and my continued engagements since my return has prevented me from giving an earlier reply to your letter of the 25th of February.

While at Havana I succeeded in obtaining the original documents in the following cases: The grant to Arredondo & Son for twenty-four miles square, the grant to John Forbes & Co. east of Appalachicola River, the grant to John Forbes & Co. west of Apalachicola, the grant to Panton Leslie & Co., and the grant to John Forbes individually for an island in the river Appalachicola. The four last grants contain more than four millions of acres. They present a front of near two hundred miles on our coast, and include three of the principal sea ports of the Territory.

The papers in the case of Arredondo & Son appear to be genuine, and the character of the grant does not seem to be altered by the production of the original documents.

The one of John Forbes & Co. east of the Appalachicola bears evident marks of fraud. The consideration of the original deed from the Indians is yet blank, though the copy on which the claimants have founded their action contains the sum of $19,387 four and a half rials.

The deed was not executed by the *the* representative of the Seminole Indians, to whom the land belonged (if the right of an Indian tribe was acknowledged by the Spanish Government, which I do not admit), but was signed by twelve Indians, most of them obscure individuals of "the lower towns of the Creek Nation." These people, as well as that from whom the debts are said to have been due to the house of Forbes & Co., and for the payment of which the land was sold, resided within the jurisdiction of the United States. Within the limits of this grant is situated the fortress of St. Marks, which, at the date of *of* the sale was garrisoned by the troops of Spain, and which was subsequently delivered to the American commissioners as public property. Perhaps a greater absurdity could not be conjectured than that which is involved in the
468 supposition that the Indians located within our limits had a right to sell to the subjects of a foreign power a Spanish fortification while in the occupancy of the troops of the crown. But strange as it may seem, this is the foundation of the claim.

The proceedings in the case of Penton, Leslie & Co. are more formal, but the grant is liable to the following objections: It was made subsequently to the death of Punton & Leslie. The deed was not the act of the Seminole Nation, but was signed principally, not by the chiefs, but by obscure individuals who reside within the jurisdiction of the United States. The debts said to have been due the bank of Panton, Leslie & Co. were not contracted with the Seminole Indians, but the Upper and Lower Creeks. The list of debtors accompanying the original papers exhibit a large majority of English and American names, against many of whom sums of three and four thousand dollars are charged. One of these individuals, I believe, we shall be able to prove was a clerk in the house of Panton, Leslie & Co. Both of these sales are said to have been confirmed *confirmed* by Governor Folch, then at the head of the civil and military departments of West Florida. But I think I am warranted in the belief that this part of the proceedings is spurious.

Among the original papers, which I obtained from the archives of Havana, are two separate and distinct documents purporting to be copies of the orignal acts of confirmation by Gov. Folch, which were delivered to the claimants, and yet these claimants have founded their action on other copies which bear the same certificate of authentication, signed at the same time and by the same officers, without attempting to account in any manner for the absence of the original deed of confirmation, which is certified to have been delivered to them. There are other grants on which fraud may be presumed. On the 28th day of November, 1806, after the Indian sales to Panton, Leslie & Co. had been completed, John Forbes, one of the partners, petitioned Folch for a confirmation of those sales. On the same day writes on the margin of the petition "as he asks Folch."

All these papers, with a plat of the land, are bound in the same
468½ paper book, but on the 3d of December, 1806, only six days after, a new paper book is found containing this certified copy of the deed of confirmation by Folch, though there is no new petition of the party accompanying this deed. The same thing occurs in the grant to Forbes & Co. in 1811, and the official certificate of both copies have dates the 20th of December, 1811. I am myself perfectly convinced that the long and formal act of confirmation, which you will find in the 7" vol. of Executive Papers accompanying the report of the commissioners of West Florida, is spurious and that it never was executed by Folch. But should I be mistaken in this belief, there are other fatal objections to both these claims. I have obtained the most ample and conclusive evidence of the total want of power on the part of Governor Folch to make or confirm grants of land in West Florida after the 31st of March, 1806, and the treaty, as well as the several acts of Congress for carrying it into effect, having only provided for the confirmation by our Government of such grants of land as were made in Florida by "His Catholic Majesty or his lawful authorities" this claim must be rejected.

The grant to John Forbes & Co. west of the Appalachicola calls for million and a half of acres, but from its boundaries must contain more than twice that quantity. It bears upon its face conclusive evidence of its fraudulent character. In order to bring it within the provisions of the 8th article of the treaty, which renders void all grants made subsequent to the 24th day of January, 1818, the original dates have been

erased and others inserted. This occurs in the date of every document from the first decree of the capt. genl. of Cuba to the act of confirmation by Gnl. Mosat. The original dates were February and March, and they have been altered to the 10th and 23d of January, 1818.

The claim of John Forbes for an island in the River Apalachicola containing seven thousand acres depends alone on a deed of gift from a few of the Indians residing within the jurisdiction of the United States. I have thus endeavored to give you a brief view of some of the prominent objections to the cases above enumerated, and shall be happy to receive your opinion on the several points presented or any other suggestions which you may be pleased to offer.

469 In the course of my examination I find reference made to a treaty between Great Britian and the Indians previous to the year 1765, at Augusta, by which all the seacoast as high as the tide flows was deeded to the latter Government. If this treaty could be procured it would show that the Indians of Florida conveyed their rights to the sea board of this Territory to the English, and consequently that Spain acquired the same rights by the treaty of 1783. This would put the Indian title to rest.

I am, sir, very respectfully, yr. obdt.,

R. K. CALL.

Mr. WM. WIRT.

(This paper is endorsed:) "Filed in evidence marked 'Exhibit No. 6.' R. B. Archibald, special master, Dec. 30, 1903. #210. P. 225, No. 6, Defdt. Dalcour vs. U. S. U. S. District Court Southern District of Florida. Filed Mar. 17, 1904. E. O. Locke, clerk."

470 7.

No. 23377. United States of America, Department of State, to all to whom these presents shall come, greeting:

I certify that the documents hereto annexed are true copies from records of the Department.

In testimony whereof I, John Hay, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed. Done at the city of Washington this 5th day of February, A. D. 1904, and of the Independence of the United States of America, the one hundred and twenty-eighth.

[Seal of Dept. of State.] JOHN HAY.

Andrew Jackson, President of the United States of America, to Richard K. Call, of Florida, greeting:

Whereas, by the second article of the treaty of amity, settlement and limits, concluded at Washington on the 22d day of February, 1819, between these United States and His Catholic Majesty it is stipulated as follows: "His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him situated to the eastward of the Mississippi, known by the name of East and West Florida; the adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other

buildings which are not private property, archives and documents which relate directly to the property and sovereignty of said provinces are included in this article. The said archives and documents shall be left in the possession of the commissaries or officers of the United States duly authorized to receive them." Now, therefore, I do hereby authorize and appoint you, as commissary of the United States, to receive from any and every person who may be possessed of the said archives and documents, all and every one of the same; and the said archives and documents to keep in safe custody, until further order for the disposal of the same shall be taken.

471 Given under my hand and the seal of the said United States at Washington this third day of April, 1829, and in the fifty-third year of the Independence of the United States.

[L. S.] ANDREW JACKSON.

By the President.

M. VAN BUREN, *Secretary of State*

(Endorsed:) "210. 225. L. 1. U. S. District Court Southern District of Florida. Dalcour vs. U. S. 7. Filed in evidence by defendant and marked "Exhibit 7." R. B. Archibald, special master. Filed Mar. 17, 1904. E. O. Locke, clerk.

* * * * * * *

479½ These three maps were filed with report of Master R. B. Archibald as "Exhibit D," and were endorsed "210–225–L. 1. U. S. District Court, Southern district of Florida. Dalcour vs. U. S. D. Filed in evidence as Exhibit D, Dec. 28, 1903. R. B. Archibald, special master. Filed Mar. 17, 1904. E. O. Locke, clerk.

(Here follow maps marked pp. 480, 481, & 482.)

483 District Court of the United States, Southern District of Florida.

THEODORE DALCOUR ET AL.
vs.
THE UNITED STATES. } No. 210.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing document, consisting of typewritten, written, and blank pages, maps, drawings, and inserts, numbered from 1 to 483, inclusive, are a full, true, and correct copy of the record in the above-entitled cause, as the same appears from the files and records in my office at Jacksonville, Florida, saving and excepting certain papers which have been omitted therefrom by consent, agreement, and direction of the respective counsel, W. W. Dewhurst, for plaintiff, and J. N. Stripling, district attorney, and Robt. O. Howard, for the United States, as duplicating and otherwise cumbering the record.

In testimony whereof I hereunto set my hand officially and affix the seal of said court, at Jacksonville, in said district, this tenth day of June, A. D. 1905.

[SEAL.] EUGENE O. LOCKE, *Clerk.*

FOLD OUT IS TOO LARGE TO BE FILMED

484 In the Supreme Court of the United States, October term, 1905.

THE UNITED STATES, APPELLANT,
v.
THEODORE DALCOUR ET AL. } No.

Stipulation for printing record.

It is hereby stipulated and agreed between Henry M. Hoyt, Solicitor-General for the United States, appellant, and William W. Dewhurst, esq., and W. A. Blount, esq., solicitors for the appellees, that the following specified parts of the record which the parties think necessary for the consideration of the court upon the assignments of error herein shall be printed as the record in the case.

H. M. HOYT,
Solicitor-General.

WILLIAM W. DEWHURST,
W. A. BLOUNT,
Solicitors for the Appellees.

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486 (Indorsed: File No. 19826. Supreme Court U. S. October term, 1905. Term No. 324. The United States, appellant, vs. Theodore Dalcour et al. Stipulation as to parts to be printed. Filed Sept. 28", 1905.

(Indorsement on cover:) File No. 19826. S. Florida D. C. U. S. Term No. 324. The United States, appellant, vs. Theodore Dalcour et al., heirs of John Forbes, deceased, et al. Filed July 3d, 1905. File No. 19826. Office of the clerk of the Supreme Court U. S. Received June 12, 1905.

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